TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 230

PETER J. CARPENTER, PETITIONER,

vs.

WABASH RAILWAY COMPANY, FRANK C. NICODEMUS, JR., NORMAN B. PITCAIRN, RECEIVERS, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 26, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 11,354

IN EQUITY

PETER J. CARPENTER, APPELLANT,

vs.

WABASH RAILWAY COMPANY, ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED NOVEMBER 5, 1938.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1939, of said Court, before the Honorable John B. Sanborn, the Honorable Seth Thomas and the Honorable Arba S. Van Valkenburgh, Circuit Judges.

Attest:

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Seal)

Be it Remembered that heretofore, to-wit: on the fifth day of November, A. D. 1938, a transcript of record pursuant to an appeal taken from the District Court of the United States for the Eastern District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Peter J. Carpenter was Appellant and the Wabash Railway Company, et al., were Appellees, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

[fol. 1] Notice of Appeal of Peter J. Carpenter.

(Filed Sept. 30, 1938.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

T. J. Moss Tie Company, Complainant,

vs.

Wabash Railway Company, Defendant.

(Constituent Cause In Equity No. 9704.)

The Chase National Bank of the City of New York, as Trustee, Complainant,

vs.

Wabash Railway Company, Et Al., Defendants.

(Constituent Cause In Equity No. 12099.)

Central Hanover Bank & Trust Company, as Trustee under the First Mortgage of the Wabash Railroad Company, dated May 1, 1889, Complainant,

vs.

Wabash Railway Company, Et Al., Defendants.

(Constituent Cause In Equity No. 12357.)

In Equity No. 12099, Consolidated Cause.

Notice Is Hereby Given, that Peter J. Carpenter, who did, on January 26th, 1938, file in the above entitled Con-[fol. 2] solidated Cause, his Application For Leave To File in said Cause his Petition presented with, and attached to, said Application and entitled "Petition Of Peter J. Carpenter For Order Terminating Receivership of Wabash Railway Company and Dissolving Temporary Restraining Order and Injunction", hereby appeals to

the United States Circuit Court of Appeals for the Eighth Circuit from the orders, judgment and decree made and entered in the above entitled Consolidated Cause and Action, on August 31st, 1938, by the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, and whereby the said District Court denied the said Application of Peter J. Carpenter for leave to file his said Petition and in effect refused an Order to wind up the pending receivership of Wabash Railway Company or to take the necessary steps to accomplish the purposes thereof, and continued the Temporary Injunction granted on December 1, 1931 and described in said Application and Petition, and refused the Application of said Peter J. Carpenter to dissolve said Injunction, and ruled and adjudged that the claim and judgment of said Peter J. Carpenter recovered by him in the Circuit Court of the City of St. Louis, Missouri, against Wabash Railway Company, and described in his said Application and Petition as, and had been correctly and finally determined to be, a general unsecured claim and not entitled to any lien or priority.

MARK D. EAGLETON,
HYMAN G. STEIN,
Attorneys for Peter J. Carpenter,
(Appellant).

[fol. 3] Bill of Complaint.

(Filed Dec. 1, 1931.)

District Court of the United States for the Eastern Division of the Eastern District of Missouri.

T. J. Moss Tie Company, Complainant,
No. 9704. against In Equity.
Wabash Railway Company, Defendant.

To the Honorable The Judges of the District Court of the United States, for the Eastern District of Missouri:

T. J. Moss Tie Company, a Corporation duly created by and existing under the laws of the State of Missouri, a citizen of said State and having its principal office and place of business in the City of St. Louis in said State,

brings this its bill of complaint against Wabash Railway Company, a railroad corporation created by and existing under the laws of the State of Indiana, and having its principal operating and general offices and place of business in the City of St. Louis, in the State of Missouri, and shows unto Your Honors as follows:

First: That Complainant is a corporation duly organized and existing under the laws of the State of Missouri and a citizen and resident of said State, within the meaning of the laws fixing and defining the jurisdiction of this Honorable Court.

Second: That the defendant, Wabash Railway Company (hereinafter called the "Railway Company") is a railroad corporation organized and existing under the laws of the State of Indiana, and that its principal operating and general offices, as well as a substantial part of the railroads owned and operated by it, to wit: 652.35 miles thereof are located within the State of Missouri, its said principal operating and general offices being located at the City of St. Louis, in said State; and that said Railway Company is a citizen and resident of said State of Indiana, [fol. 4] within the meaning of the laws fixing and defining the jurisdiction of this Honorable Court.

Third: That the defendant Railway Company owns, possesses and operates certain lines of railroad in the States of Missouri, Iowa, Illinois, Indiana, Michigan, and Ohio, extending—

(1) From the City of Toledo, in a westerly direction into or through the Counties of Lucas, Fulton, Henry, Defiance, and Paulding, in the State of Ohio, and the Counties of Allen, Huntington, Wabash, Miami, Cass, Carroll, Tippecanoe, Fountain, and Warren, in the State of Indiana, and the Counties of Vermillion, Champaign, Piatt, Macon, Sangamon, Morgan and Scott, in the State of Illinois, to Bluffs, in said State, and from Bluffs through Naples, in said County of Scott, to East Hannibal on the east bank of the Mississippi River in the County of Pike, State of Illinois, including all property of the Railway Company situate in the City of Hannibal, County of Marion and State of Missouri: from Bluffs into or through the Counties of Scott, Morgan, Pike, Brown and

Adams, in the State of Illinois, to Camp Point in said County of Adams; from Clayton into or through the Counties of Adams and Hancock, in the State of Illinois, to Elvaston on the east bank of the Mississippi River; from Decatur into or through the Counties of Macon, Christian, Montgomery, Macoupin, Madison and St. Clair, in the State of Illinois, to East St. Louis in said state; from Effingham into or through the Counties of Effingham, Shelby, Moultrie, Piatt, McLean, Champaign, and Ford, to Forrest, in Livingston County; in the State of Illinois, and through the Counties of Livingston and LaSalle from Fairbury to Streator in said State; from Altamont, in the County of Effingham, State of Illinois, to Shemway in said County; from Forrest through the Counties of Livingston, Kankakee, Will and Cook, in the State of Illinois, to or near the City of Chicago, in said State; from Edwardsville, Madison County, Illinois, to Edwardsville Crossing in said County; from Detroit, in the State of Michigan, in a westerly direction into or through the Counties of Wayne, Washtenaw, Monroe, and Lenawee, in the State of Michigan, and from [thense] into or through the Counties of Fulton and Williams in the State of Ohio, and into or through the County of Dekalb to Butler in the [fol. 5] State of Indiana; from the City of St. Louis, State of Missouri, by the way of North Market Street and Bellefontaine to Ferguson, in the County of St. Louis; from the Union Depot in the said City of St. Louis by the way of Forest Park to Ferguson and from thence in a northwesterly direction into and through the Counties of St. Louis, St. Charles, Warren, Montgomery, Audrain, Boone, and Randolph in the State of Missouri, to Moberly, in said State (including the bridge over the Missouri River at St. Charles) and from thence in a westerly direction into or through the Counties of Randolph, Chariton, Carroll, Ray, Clay, and Jackson in the State of Missouri to Kansas City in said State; from Brunswick in a northwesterly direction into and through the Counties of Chariton, Linn and Livingston, in the State of Missouri to Chillicothe, in said State; from Salisbury, in the County of Chariton, State of Missouri, to Glasgow, in Howard County; from Moberly in a northerly direction through the Counties of Randolph, Macon, Adair, and Schuyler, in the State of Missouri, and from thence into

or through the Counties of Appanoose, Davis, and Wapello, in the State of Iowa, to Ottumwa, in said State, and from Centralia, in the County of Boone, State of Missouri, to Columbia, in said County and State.

(2) From Montpelier in the County of Williams, State of Ohio, in a southeasterly direction, into or through the Counties of Williams, Fulton, and Lucas, in said State of Ohio, to a point of connection with the railroad of the railway Company at or near Maumee, in said County of Lucas; from New Haven, in the County of Allen, State of Indiana, into or through said County and the County of Dekalb, in said State, to a point of connection with the railroad of the Railway Company at or near Butler, in said County of Dekalb; from a point of connection with the railroad of the Railway Company, in the town of Montpelier, in the County of Williams, State of Ohio, and extending in a westerly direction through said County and into or through the Counties of Steuben, LaGrange, Noble, Elkhart, St. Joseph, LaPorte, Porter, and Lake, in the State of Indiana, to a point of connection with the tracks of the Chicago Terminal Transfer Railway Company, at or near Clarke Junction, in the State of Indiana.

[fol. 6] (3) From the grounds of the Union Pacific Transfer, in the City of Council Bluffs, Iowa, and from the freight depot of the Railway Company, in the City of Council Bluffs, to a connection with the line from the Union Pacific Transfer through the Counties of Pottawattamie, Mills, Fremont, and Page, in the said State of Iowa, and the Counties of Atchison, Nodaway, Gentry, and Daviess, in the State of Missouri, to or near Pattonsburg, in said County of Daviess and State of Missouri, and from Pattonsburg to said Chillicothe.

(4) From a point of connection in or near the City of Des Moines with the tracks of the Des Moines Union Railway Company and extending from thence in a southeasterly direction through the Counties of Polk, Marion, and Monroe to the town of Albia, in said County of Monroe; from Albia, in said County of Monroe, thence in a southerly direction through the Counties of Monroe and Appanoose to a point in or near the town of Moulton, in said County of Appanoose;

All of which said lines of railroad aggregate in length about 2,237.40 miles, and are located in the above-mentioned States as follows:

In the State of Missouri	652.35 miles
In the State of Iowa	208.96 miles
In the State of Indiana	357.46 miles
In the State of Illinois	742.81 miles
In the State of Michigan	105.60 miles
In the State of Ohio	170.22 miles

and also owned and now owns certain rolling stock and equipment and other property, both real and personal, rights, privileges and franchises appertaining to or used in connection with its lines of railroad and business, and was and is also the owner of certain bonds and stocks of various other corporations.

Fourth: Complainant further alleges, on information and belief, that the lines of railroad owned and operated by said defendant Railway Company are subject to certain mortgages and other liens and that certain of the equipment owned by the defendant Railway company is subject to various liens, which said mortgages and other liens secure indebtedness of the defendant Railway Company outstanding on November 1, 1931, as Complainant [fol. 7] is informed and believes, as follows:

First Mortgage Bonds	$ 33,891,000
Second Mortgage Bonds	13,993,000
Detroit & Chicago Extension Bonds	2,072,000
Des Moines Division Bonds	1,600,000
Toledo & Chicago Division Bonds	3,000,000
Omaha Division Bonds	3,173,500
Columbia & St. Louis R. R. Co.	200,000
First Lien Terminal Gold Bonds	4,063,000
Refunding & General Mortgage Bonds, Series A	12,500,000
Refunding & General Mortgage Bonds, Series B	15,500,000

Refunding & General Mortgage Bonds, Series C	17,867,000
Refunding & General Mortgage Bonds, Series D	15,000,000
Debenture B Bonds	1,248,000
Equipment Trust Certificates of 1920	3,021,600
Equipment Trust Certificates of 1922	1,698,000
Equipment Trust Certificates of 1923, Series C	938,000
Equipment Trust Certificates of 1924, Series D	1,328,000
Equipment Trust Certificates of 1924, Series E	1,539,000
Equipment Trust Certificates of 1925, Series F	2,790,000
Equipment Trust Certificates of 1927, Series G	1,925,000
Equipment Trust Certificates of 1929, Series H	2,925,000
Bank Loans	9,750,000
North Kansas City Development Co. land purchase contr.	925,200
Total	$150,947,300

Fifth: Complainant is informed and believes that failure to meet the interest on the foregoing indebtedness, or any part thereof, as such interest matures will operate as a default under the mortgages or other instruments securing such indebtedness and render such mortgages or other instruments enforcible, and will permit the trustees of the respective mortgages or other instruments securing said indebtedness to bring suitable actions and proceed-[fol. 8] ings to enforce the liens created by said mortgages or other instruments securing said indebtedness, by the institution of actions for the foreclosure of said liens or the enforcement of the other proper remedies granted by said mortgages or other instruments in case of default in the performance by the defendant Railway Company of its covenants contained therein.

Complainant is informed and believes that the annual interest charge payable in respect of the foregoing indebtedness amounted, in the year ending October 31, 1931, to more than $6,806,389, and that the surplus or net revenues derived by the defendant Railway Company, from the

operation of its properties and from other sources during said period were insufficient, as shown in the reports of said defendant Railway Company, to pay and discharge such interest requirements, and further, that the excess of liabilities of the defendant Railway Company over and above the amount of the book values of its assets exceeded the sum of $6,000,000. Complainant further alleges, on information and belief, that the gross earnings of the defendant Railway Company for the ten months ending October 31, 1931, of the present fiscal year, were less by a sum in excess of $11,290,000 than the gross earnings of said defendant Railroad Company for the same period of the preceding fiscal year, while there has been no substantial diminution or decrease in the fixed charges of the defendant Railway Company.

Complainant further alleges, upon information and belief, that included in the assets of the defendant Railway Company, as stated in its published balance sheets, are various securities owned by the defendant Railway Company and in its said balance sheets included at their par value or purchase price, which said securities, by reason of the financial and legal situation of the companies issuing the same, are either wholly valueless or of an actual value considerably less than the par value or purchase price thereof as so stated in the balance sheets of the defendant Railway Company; and Complainant further alleges, upon information and belief, that if the true or actual value of the assets of the defendant Railway Company were stated upon its balance sheets, the result would be that the undisputed liabilities of the defendant Railway Company would exceed the actual value of its assets by many millions of dollars.

[fol. 9] Sixth: Complainant alleges that the defendant Railway Company is indebted to Complainant in the sum of $49,651.95 for cross, switch ties and preservative treatment furnished by Complainant to the defendant Railway Company at the request of said defendant, and for which said defendant agreed to pay to Complainant the sum of $49,651.95; that payment of said sum has been duly demanded by Complainant from said defendant, and payment thereof refused, and the same is now wholly due and unpaid, although said indebtedness is admitted by said de-

fendant to be due and payable by it to Complainant; that said defendant has neglected to pay to Complainant the said indebtedness, or any part thereof, and claims to be unable so to do by reason of its financial condition. That said cross-ties, switch ties [switch ties], and preservative treatment were furnished to said defendant for the purpose of the operation of its lines of railroad and to fulfill the duties of said defendant Railway Company towards the public, as prescribed by Acts of Congress of the United States and statutes of the various States in which its lines of railroad are located, and in order to enable said defendant Railway Company to discharge its obligations under the various franchises and privileges granted to it in connection with the operation of its lines of railroad.

Seventh: Complainant further alleges, upon information and belief, that in order that the defendant Railway Company may be enabled to comply with the requirements of Acts of Congress of the United States and the laws of the various States in which its lines of railroad are situated, as well as with the lawful rules and orders of the Interstate Commerce Commission and the Public Service or Public Utility Commissions of said respective States, with reference to the manner of operation of the lines of railroad of the defendant Railway Company and the conduct of its business as a common carrier, it will be necessary for said defendant Railway Company to expend large sums of money, and that the revenues and resources of said defendant Railway Company, after the payment and discharge of its fixed charges, will be insufficient to admit of such expenditures, and further, that upon failure to observe and comply with certain of said rules and requirements the defendant Railway Company will be and become subject to the payment of large fines and penalties, enforceable agains its property in preference and priority to the claims and demands of its general and unsecured creditors.

[fol. 10] Eighth: Complainant is informed and believes that the defendant Railway Company has outstanding floating indebtedness, for materials and supplies furnished to it, in an amount upwards of $4,730,476.00; that said floating indebtedness is now overdue; that the defendant Railway Company is unable to pay the same, and that the

holders thereof are pressing for payment of the same; that the defendant Railway Company is without means to effect loans for the purpose of meeting such obligations, and is without collateral available for such purpose. Complainant is informed and believes that the defendant Railway Company has no means at hand with which to meet its immediate and pressing needs in operating its lines of railroad; that many of the creditors to whom the defendant Railway Company is liable are pressing it for immediate payment and that some of said creditors will bring suits in respect of their said claims, and may levy execution on the lines of railroad owned by the defendant Railway Company and on the materials and supplies and other property of the defendant Railway Company on hand and kept by the defendant for necessary use in operating its lines of railroad; and Complainant alleges, on information and belief, that there is grave danger that the lines of the defendant Railway Company may no longer be operated in a single system, but may be broken up and separately operated, and that it is essentially to the interests of the defendant and to the interests of the public and to Complainant that the property of the defendant Railway Company should not be sacrificed. That the only means whereby the defendant Railway Company can pay its floating indebtedness and discharge its current obligations is by the continued maintenance and operation of said system of railroads as a whole and by an uninterrupted use thereof; that any suits upon or progress against its properties or its revenues would seriously embarrass and cripple it and greatly diminish, if not destroy, its power successfully to operate said system together with all its appurtenances; that, notwithstanding the fact that every effort has been made to provide funds for the payment of the indebtedness of the defendant, or for the extension of the time of payment thereof, such efforts have proved unsuccessful, and that unless some definite action is taken on behalf of all of the creditors, so that the operation of the defendant's system may be kept intact, great and severe loss will be inflicted on all creditors.

[fol. 11] Ninth: Complainant believes that unless the Court, in view of the facts above stated, shall take the railroads and properties of the defendant Railway Company

into judicial custody for the protection of every interest therein, immediately upon default individual creditors will assert their rights and remedies in different courts. That the result will be a multiplicity of suits and a race of diligence; that attempts will be made to secure judgments and priorities; that levies will be made upon cars, rolling-stock material and supplies indispensable to the operation of said lines of railroad, which will greatly interfere with and ultimately prevent the defendant from the proper performance of its duties as a common carrier, and will seriously diminish its earnings; and that it will be impossible to operate said lines of railroad as a whole, to the serious inconvenience of the public.

And your Complainant alleges that an attempt by it to enforce at law its claims as a general creditor would precipitate similar action on the part of numerous other creditors, and this in turn would [be] lead to wasteful strife and controversy, which Complainant believes can be avoided, and the property preserved for equitable distribution among those entitled thereto, only by the intervention of a court of equity and the granting of equitable relief, including the appointment of a receiver.

Tenth: Complainant is further informed and believes that, in the performance of the public duties of the defendant Railway Company, it is necessary that prompt payment be made by it of traffic balances, terminal charges and trackage rentals, involving business with other railroad and terminal companies, as the same become due, and that a failure to pay the same will result in the forfeiture of valuable rights and franchises of the defendant Railway Company under leases, trackage contracts, and municipal ordinances, and the breaking off of the exchange of business by connecting carriers, resulting in largely decreased revenues; and Complainant is informed and believes, and therefore alleges, that the defendant Railway Company has become and is wholly and completely insolvent.

Eleventh: That under the foregoing circumstances Complainant alleges that the intervention of a court of equity, for the protection of Complainant's rights and the rights of all other parties in interest, is immediately required, and

[fol. 12] especially for the timely appointment of a receiver to take charge of and preserve the property of the defendant Railway Company, continue the operation of its lines of railroad for the accommodation of the public, and collect and receive, and properly appropriate, the income of said property under the orders of the court to be made from time to time until the final decree of the court in the premises.

Twelfth: That this is a civil suit in the nature of a claim in equity, and the matter in dispute exceeds, exclusive of interest and costs, the sum of $5,000.

Inasmuch, therefore, as Complainant has no adequate remedy at law for its aforesaid grievances, and can have relief only in equity, Complainant files this bill of complaint in behalf of itself and of other creditors of the defendant Railway Company, who may come in and contribute to the expense hereof, and prays for equitable relief as follows:

(1) That the rights of Complainant and of the other creditors of the [defentant] Railway Company, including all holders of its mortgages, bonds and secured obligations, may be ascertained and decreed, and that the Court will fully administer the funds in which Complainant is interested, constituting the entire property and assets of the defendant Railway Company; and will, for such purpose, marshal all the assets of the defendant Railway Company and ascertain the several and respective liens and priorities existing upon each and every part of said property and assets, and enforce and decree the rights, liens and equities of the creditors of the defendant Railway Company, as the same may be finally ascertained and decreed by the Court, in and to each and every portion of the property and assets of the defendant Railway Company.

(2) That for the purpose of preserving the unity and integrity of the railroads and property of the defendant Railway Company and of preventing the disruption thereof by separate executions, attachments or sequestrations, or by the enforcement of liens upon separate portions thereof, and for the purpose of continuing the business of the defendant Railway Company as a going concern and han-

dling properly the earnings derived from the operation of said railroads and property and preventing commerce between the States being interfered with and a multiplicity of suits, a receiver be appointed by this Honorable Court of all and singular the railroads, rolling-stock, franchises, rights, property and premises of every kind and description and wheresoever located belonging to the defend- [fol. 13] ant Railway Company, together with the rents, issues, profits, revenues and income thereof, with full power and authority to demand, use, convey, collect and take into possession the goods, chattels, rights, credits, moneys, effects, lands, tenements, books, papers, and property of every kind and description belonging to the defendant Railway Company, and with the usual powers of receivers in such cases, and to operate said railroads and property and collect and receive the income and tolls thereof and apply the same under the order or decree of this Honorable Court, and to appoint such agents as may be necessary to the proper management of all of said property and premises; and that the defendant, Wabash Railway Company, be decreed to make such transfers or conveyances, to the receiver appointed as herein prayed, as may be necessary or proper.

(3) That a writ of injunction may be issued out of and under the seal of this Honorable Court, directing, commanding, enjoining, and restraining the defendant, Wabash Railway Company, and all persons, firms, and corporations whatsoever and wheresoever located, situated or domiciled, from interfering with, transferring, selling or disposing of, attaching, levying upon, or in any manner whatsoever disturbing any part of the railroads and property now or hereafter in the possession of any receiver appointed in this cause.

(4) That the defendant be required to answer all and singular the matters above stated.

(5) That a writ of subpoena may be granted to Complainant, to be directed to the defendant, thereby requiring the defendant personally to appear on a certain day before the Court, and then and there full, true, direct and perfect answer make to all and singular the premises, but not under oath (answer under oath being hereby expressly

waived) and, further, to perform and abide by such further order, direction or decree as to the Court shall seem meet.

(6) That Complainant may have such other and further relief in the premises as the nature and circumstances of this case may require and as to this Honorable Court shall seem meet.

FRED L. WILLIAMS,
EARL F. NELSON,
Solicitors for Complainant.

[fol. 14] State of Missouri,
City of St. Louis.—ss.:

E. E. Pershall, being duly sworn, deposes and says, that he is President of the T. J. Moss Tie Company, Complainant in the above entitled cause; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

E. E. PERSHALL.

Subscribed and sworn to before me this 1st day of December, 1931.

(Seal) ODILE DI FULVIO,
Notary Public.

My commission expires on the 23rd day of September, 1934.

Filed Dec. 1, 1931. Jas. J. O'Connor, Clerk.

[fol. 15] Answer.

(Filed Dec. 1, 1931.)

Wabash Railway Company, the defendant in this cause, for answer to the bill of complaint herein or so much or such parts thereof as the defendant is advised it is necessary or material for the defendant to make answer unto, answering, says:

First: The defendant admits all the allegations of said bill of complaint.

Second: The defendant, reiterating the admission of the preceding paragraph of this answer, and believing it to be its duty to its stockholders and creditors to protect its property and business and to treat the same as a trust fund for their security, joins in the prayer of said bill of complaint and prays that this Court, sitting in equity, will take possession of the railroads and property of the defendant, through the appointment of a receiver, as prayed in said bill of complaint, and thereby preserve the unity of its system of railroads and protect and preserve the corporate franchises, privileges and property, and preserve the corporate existence of the defendant, and protect and preserve its railroads and property (real and personal) [fol. 16] from being sacrificed under any proceedings, which can or may be taken, liable to prejudice or sacrifice the same; and it accordingly prays that inasmuch as there is no adequate remedy at law in the premises, for the complainant or for the defendant, that this Court will, for the purposes aforesaid, appoint a receiver as prayed for in said bill of complaint, and authorize, empower, and direct the receiver so appointed to take possession of the entire property and business of this defendant and to preserve, manage, operate, and control the same, pay all indebtedness due or to become due by this defendant and otherwise discharge all the duties ordinarily imposed by courts upon receivers in similar cases; that on the final hearing of this cause this Court will, on the said bill of complaint and this answer or such supplemental bills, cross-bills, or petitions as may properly be filed herein, make such decree or decrees with respect to the property of the defendant as shall deal with the same on general equitable principles; that this Court will cause all the liens upon said property or any part thereof, and all rights and claims in equity of persons interested therein, to be ascertained, defined and determined, and that the proceeds arising from the sale of said property or any part thereof be applied, under the said orders or decrees of this Court, according to the rights, interests, and equities of the parties interested therein; and that this Court will direct all persons in possession of the property of this defendant, or any part

thereof, to surrender the same to the said receiver or to hold such property under such receiver.

N. S. BROWN,
Solicitor for the Defendant,
Wabash Railway Company.

State of Missouri,
City of St. Louis—ss.

N. S. Brown, being duly sworn, deposes and says that he is Vice President and General Solicitor of Wabash Rail-
[fol. 17] way Company, the defendant in the above entitled cause; that he prepared the foregoing answer and that the statements and requests therein set forth are made by him pursuant to authority of the Board of Directors of said defendant.

N. S. BROWN.

Subscribed and sworn to before me this 1st day of December, 1931.

ODILE DI FULVIO,
(Seal) Notary Public.

My Commission expires Sept. 23, 1934.

Filed Dec. 1, 1931. Jas. J. O'Connor, Clerk.

[fol. 18] (Order Appointing Walter S. Franklin and Frank C. Nicodemus, Jr., as Receivers, etc.)

(Filed December 1, 1931.)

District Court of the United States for the Eastern Division of the Eastern Judicial [—] of Missouri.

T. J. Moss Tie Company, Complainant,
No. 9704. vs. In Equity,
Wabash Railway Company, Defendant.

On reading and considering the verified bill of complaint in this cause, and on motion of counsel for the complainant and the defendant Wabash Railway Company, appearing by its Counsel and assenting thereto, and due deliberation being had, it is

Ordered, Adjudged and Decreed by the Court:

1. That Walter S. Franklin, a resident of the City of St. Louis, State of Missouri, and Frank C. Nicodemus, Jr.,

of New York, New York, be, and they are hereby appointed Receivers of all and singular the railroads, lands, property, assets, rights and franchises of Wabash Railway Company, including all railroads and other property and assets, real, personal and mixed, of whatever kind or description and wherever situated, owned, leased or operated by said Railway Company, with all tracks, terminal facilities, warehouses, offices, stations, shops and all other buildings and appurtenances of every kind, and all locomotives, cars and other rolling stock and equipment of every kind and description, and all tools, machinery, furniture, fixtures, coal, materials and supplies, and all books of account, records and other books, papers, cash in banks, and all other moneys, all debts, things in action, credits, stocks, [fol. 19] bonds, securities, deeds, leases, contracts, muniments of title, bills receivable, accounts receivable, rents, issues, profits and income accruing and to accrue, as well as all lease-hold interests and operating and other contracts, and all rights, interests, easements, privileges and franchises of said Railway Company, and all other assets of every kind and description.

2. That said Receivers be, and they are hereby authorized, empowered and directed immediately to take possession of all and singular said railroads, rolling stock, franchises, rights, property and premises, and to run, manage, maintain and operate the said railroads and properties wherever situated, or found, whether in this State, Judicial District or elsewhere, including such railroads and property as the said Railway Company holds, controls or operates under lease, equipment trust agreements or otherwise, and to use, manage and conduct such business in such manner, in their judgment, as will produce the best results, and, to this end, exercise the authority and franchises of said Railway Company and discharge all the public duties obligatory upon it, and to preserve said railroads and property in proper condition and repair and manage and operate said railroads and property according to the requirements of the valid laws of the various States in which the same are situated, and in the same manner that the defendant Railway Company

would be bound to do if in possession thereof, and to employ and discharge and fix the compensation of ll officers, managers, superintendents, agents and employes, and to make such payments and disbursements as may be needful and proper in so doing, and to collect and receive the income and tolls of said property, including the dividends on stock and interest upon bonds or other securities, and to hold and retain the net revenues thereof, in such manner and to the end that the same may be applied, under this order and such orders as this Court may hereafter make.

3. That said Receivers be, and they are hereby authorized and empowered to institute and prosecute within this State or elsewhere, and in their names as Receivers, or in the name of the Wabash Railway Company, as they may [fol. 20] be advised by Counsel, all such suits as may be necessary in their judgment for the proper protection of said property and the discharge of their trust, and, likewise, to defend, compromise or settle all such actions instituted against them as Receivers, and also to appear in and conduct the prosecution or defense of, or compromise or settle, any actions, proceedings or suits now pending or which may hereafter be brought in any court or before any officer, department, commission or tribunal, to which the defendant Railway Company is or shall be a party, and which in the judgment of said Receivers affect or may affect the property of which they are hereby appointed Receivers, but no payments shall be made by said Receivers in respect of any such suits, actions or proceedings without the further order or direction of the Court; and no action taken by the Receivers in the defense or settlement of any such actions or suits against the defendant Railway Company shall have the effect of establishing any claim upon or right in the property or funds in the possession of the Receivers so as to alter or change the existing equities or legal rights of the parties.

4. That within ten days from this date the said Receivers execute a bond in the sum of One Hundred Thousand Dollars ($100,000.00) and file the same [—] the office of the Clerk of this Court, with one or more sureties approved by this Court or one of the judges hereof, for the benefit of whom it may concern, conditioned to the effect that they will well and truly perform the duties of their office, and duly

account for all moneys and property which may come into their hands, and abide by and perform all things which they shall be directed by the Court to do.

5. That said Receivers are hereby authorized, in their discretion, from time to time, out of the funds coming into their hands, to pay all taxes due upon the mortgaged property and to pay the expenses of operating said properties and executing the trust, and to pay the wages of employes, and to pay and discharge all such traffic and car mileage balances and amounts for car and equipment repairs as may be due or become due to connecting or other railroads or other common carriers, and also all interest which may become due and payable upon bonds, equipment trust agree-[fol. 21] ments, land purchase contracts or bank loans of the defendant Railway Company secured by mortgage or lien upon all or any part of its railroads or terminal property, and any unpaid pay rolls, vouchers and supply accounts, and any salaries, wages and amounts due and payable for services rendered to the defendant Railway Company in the usual and customary operation of its properties; also all unpaid outstanding pay checks and wage checks representing labor actually performed or services rendered for the defendant Railway Company, and all amounts now or hereafter payable by sureties upon all supersedeas or appeal bonds executed by said sureties without security, for the benefit of the defendant Railway Company.

6. That said receivers shall open books of account and cause to be kept therein due and proper account of the earnings, expenses, receipts and disbursements of the railroads and property of which they are hereby appointed Receivers, and shall preserve proper vouchers for all payments made by them on account thereof, and shall deposit the moneys coming into their hands in some bank or banks, and report to the Court the bank or banks so selected.

7. That all persons, firms or corporations having in their possession any of said property and premises of which the Receivers are hereby appointed, shall deliver said property and premises to said Receivers; and each and every of the officers, directors, agents and employes of said defendant Railway Company be and they are hereby

required and commanded to forthwith turn over and deliver to said Receivers, or their duly constituted representatives, any and all books of account, vouchers and papers, deeds, leases and contracts, bills, notes, accounts, moneys, or other property, in his or their hands or under his or their control, belonging to or in the possession of said defendant Railway Company or to which it is or may become entitled, and each of said officers, directors, agents and employes is hereby commanded and directed to abide by and conform to such orders as may be given from time to time by said Receivers, or their duly constituted representatives, in conducting the operation of the said property and in the discharge of their duties as Receivers.

[fol. 22] 8. The Wabash Railway Company and the officers, directors, agents, attorneys and employes of said Railway Company, and all other persons claiming to act by virtue of or under said Railway Company, and all other persons, firms and corporations whatsoever and wheresoever situated, located or domiciled, be and they are hereby restrained and enjoined from interfering with, attaching, levying upon or in any manner whatsoever disturbing any portion of the property and premises of which Receivers are hereby appointed, or from taking possession of, or in any way interfering with, the same or any part thereof, or from interfering in any manner to prevent the discharge by said Receivers of their duties or the operation of said property and premises under the orders of this Court.

9. That said Receivers shall retain possession of and continue to discharge the duties or trusts aforesaid until the further order of this Court, and shall from time to time make report of their conduct in the premises, and may from time to time apply to this Court for such other and further order and direction as they may deem necessary and requisite to the due administration of said trust. That said Receivers, within ninety days from the entry of this order, file with this Court an inventory of property coming into their possession as such Receivers, and also file a separate report or reports showing the amount of moneys coming into their hands as such Receivers, derived from the operation of the railroads and property of the defendant Railway Company prior to the entry of this order.

10. That the complainant herein is authorized to apply to any other court of competent jurisdiction for such order or orders in the premises as the complainant may deem necessary in aid of the orders issued by this Court. The right is reserved to the parties hereto to apply to the Court for any further or other instructions to the said Receivers; and this Court Reserves the right to make such further orders as may be proper, and in all respects regulate and control the conduct of said Receivers.

11. In case of the death, resignation or removal of either of the Receivers hereby appointed, and the appointment of a successor or successors to the Receiver who shall so die, resign or be removed, all of the provisions of this order shall apply to such successor or successors without further order or direction of the Court.

[fol. 23] 12. The Court hereby reserves the full right and jurisdiction to make from time to time such further orders, amplifying, extending, limiting or otherwise modifying or changing this order as to it may at any time seem best.

CHARLES B. DAVIS,
District Judge.

Dated 12-1-1931.

Filed Dec. 1, 1931. Jas. J. O'Connor, Clerk.

[fol. 24] (Order Appointing Nat S. Brown as General Counsel for Receivers.)

Upon consideration, it is

Ordered, That Nat S. Brown, Esq., of St. Louis, Missouri, be and he is hereby appointed General Counsel of the Receivers this day appointed in this cause by this Court, with the powers and duties ordinarily enjoyed by and imposed upon general counsel of railroad companies, and said Receivers are hereby directed to consult with him from time to time regarding the legal effect of their proposed acts, and, through him to present to the Courts their petitions, answers, reports and communications; that said General Counsel be and he is hereby authorized, until further order of this Court, to employ such attorneys, assistants, and other persons as he may deem necessary in

order that the administration of the trust estate may be lawfully conducted under the order appointing the Receivers herein, and such further orders as may be made by the Court, and to fix the amount of compensation payable to the attorneys, assistants and other persons so employed, which shall be paid out of the funds coming into the hands of the Receivers herein as a part of the expense of administering the trust estate.

CHARLES B. DAVIS,
District Judge.

Dated 12-1-1931.

Filed Dec. 3, 1931. Jas. J. O'Connor, Clerk.

[fol. 25] Record Entry to Approving and Filing Receivers' Bond.

Before Judge Davis—Court No. 2.

Dec. 3, 1931.

Now come Receivers and present their bond in the sum of $100,000.00, which bond is approved and filed.

[fol. 26] (Order Appointing Forrest C. Donnell as Special Master, etc.)

District Court of the United States for the Eastern Division of the Eastern District of Missouri.

T. J. Moss Tie Company, Complainant,
No. 9704. vs. In Equity.
Wabash Railway Company, Defendant.

Upon consideration, it is hereby

Ordered:

That Forrest C. Donnell be and he is hereby appointed Special Master in this cause and invested with the customary powers of a special master under the Federal Equity Rules.

All matters arising in the progress of this cause, which by the rules and practices of this court, or by the general or special orders of the Court, are required or proper to be referred to a special master, are hereby referred to him.

All claims, interpleas, intervening petitions or other petitions hereafter filed in this cause, by which the claimant, interpleader, intervener, or other pleader seeks to recover any money or property from the Receivers appointed in this cause out of the estate in their hands, are hereby referred to him for his investigations, determination and report. Upon the filing of any such claim, intervening petition, interplea or other such pleading the clerk of this court shall, as of course, and without any further order, transmit the same to the special master, who shall thereupon proceed with all reasonable dispatch to hear and determine the matters presented by it and to report his finding thereon to this court.

[fol. 27] In hearings before the special master he shall proceed in all respects according to the usage and practice in chancery in such cases.

Before settling his report in any contested case, the special master shall give to the parties in interest reasonable notice of the time when and the place where he will finally settle such report and of the fact that they may appear before him and file such exceptions to the same as they may desire. Any party to such a case, who feels aggrieved at the finding or decision of the special master may, at the time fixed by the special master for settling his report, file any such exceptions in writing to the same as may be deemed appropriate by such party, and no exception not so filed will be considered by the Court. The master will notify all parties interested in the matters presented by petitions in such cases of this fact.

CHARLES B. DAVIS,
District Judge.

Dated March 19, 1932.

Filed Mar. 19, 1932. Jas. J. O'Connor, Clerk.

[fol. 28] (Order as to Filing of Claims of Creditors of Wabash Railway Company, etc.)

In the District Court of the United States For the Eastern Division of the Eastern District of Missouri.

T. J. Moss Tie Company, Complainant,
No. 9704, vs. In Equity.
Wabash Railway Company, Defendant.

On this day the petition of T. J. Moss Tie Company, Complainant, filed herein, came on to be heard, and it appearing

to the Court that it is right and proper that the creditors of the defendant, Wabash Railway Company be determined, and the amount of their respective claims and the order in which the same are entitled to payment, be ascertained, and the solicitor for defendant appearing and consenting to the entry of the order sought by said petition, it is, on motion of the solicitors for complainant, hereby

Ordered:

1. That the matter of the accounts, debts and claims of all persons claiming to be creditors of the defendant, Wabash Railway Company (other than the holders of bonds or other obligations secured by mortgage or lien, or the trustees thereof, or such claims as may be paid under existing orders entered herein), against the property in the hands of the Receivers appointed in this cause, be and the same is hereby referred to Forrest C. Donnell, heretofore appointed Special Master in this cause, to ascertain and report to the Court a list of all creditors, secured and unsecured, except as aforesaid, of the defendant, Wabash Railway Company, together with a statement showing the nature and amount of their respective accounts, debts and claims.

2. That said Special Master be and he is hereby authorized, empowered and directed to investigate, hear proof, and report on all claims filed by said persons claiming to be creditors, both as to the correctness and validity of all such accounts, debts and claims, and also as to the lien and priority, if any, thereof.

3. That all persons having any such accounts, debts or claims shall file their claims on account thereof with the [fol. 29] said Special Master at his office, Room 700 Central National Bank Building, 7th and Olive Streets, St. Louis, Missouri, on or before July 1, 1932.

4. That said Special Master is hereby directed to give public notice, by publication once a week for four successive weeks in some newspaper of general circulation published in each of the Cities of St. Louis and Kansas City, Missouri; Omaha, Nebraska; Des Moines, Iowa; Chicago, Springfield and Danville, Illinois; Fort Wayne, Indiana; Toledo, Ohio; Detroit, Michigan, and Buffalo and

New York, New York, of the time within which claims on account of such accounts, debts and claim shall be filed, and said Special Master shall as to all such claims filed with him give proper and timely notice of the time and place the City of St. Louis when said claimants will be given an opportunity to present and make proof, before said Special Master, of the amounts of their respective claims and the lien and priority, if any, thereof, and to present their objections, if any, to the allowance of claims of said other creditors presented to said Special Master, which said hearings the said Special Master may adjourn from time to time and from place to place, as in his discretion he may deem proper and necessary, and further that all the solicitors of record in this cause be given timely notice of the time and place of each of said hearings, and, for the taking of said account and the discovery of the matters aforesaid, all creditors, both secured and unsecured, except as aforesaid, of the defendant, Wabash Railway Company, are ordered to produce proof of their respective claims as herein provided, and submit to such examination in respect thereof as the said Special Master may direct.

5. That said Special Master is hereby directed to proceed under this order in accordance with the authority and direction contained in the order appointing said Special Master, entered in this cause on March 19, 1932.

Dated April 7, 1932.

CHARLES B. DAVIS,
District Judge.

Filed Apr. 7, 1932. Jas. J. O'Connor, Clerk.

[fol. 30] Inventory of Physical Properties and Assets Taken Into the Possession of the Receivers on December 1, 1931.

(Filed Feb. 26, 1932.)

Pursuant to the requirements of the order of the Court entered in this cause on December 1, 1931, upon the undersigned receivers of the railroads and properties of the defendant Wabash Railway Company, the said Receivers hereby submit the following inventory of the lines of rail-

road, rolling stock, materials and supplies, and other physical properties constituting a part of the trust estate being administered by said Receivers under the orders and directions of this Court, to-wit:

I.

The following described lines of railroad owned by the defendant Wabash Railway Company, and located in the States of Indiana, Ohio, Illinois, Missouri, Michigan and Iowa, to-wit:

1. The railroad extending from the City of Toledo, in a westerly direction into or through the counties of Lucas, Fulton, Henry, Defiance and Paulding, in the State of Ohio, and the Counties of Allen, Huntington, Wabash, Miami, Cass, Carroll, Tippecanoe, Fountain and Warren, in the State of Indiana, and the counties of Vermilion, Champaign, Piatt, Macon, Sangamon, Morgan and Scott, in the State of Illinois, to Bluffs, in said State, and from Bluffs, through Naples in said County of Scott, to East Hannibal on the east bank of the Mississippi River in the county of Pike, State of Illinois, including all property of the Railway Company situate in the city of Hannibal, County of Marion and State of Missouri; from Bluffs into or through the Counties of Scott, Morgan, Pike, Brown and Adams, in the State of Illinois, to Camp Point in said County of Adams, including all property of the Railway Company situate in the City of Quincy in said County of Adams; from Clayton into or through the counties of Adams and Hancock, in the State of Illinois, to Elvaston, Illinois, together with all other property of the Railway Company situate in Hancock County, Illinois, including an undivided one-half interest in the railroad extending from the town of Hamilton in said County to the east approach of the bridge over the Mississippi river opposite Keokuk, Iowa; [fol. 31] from Decatur into or through the Counties of Macon, Christian, Montgomery, Macoupin, Madison and St. Clair in the State of Illinois, to East St. Louis in said State; from Effingham into or through the Counties of Effingham, Shelby, Moultrie, Piatt, McLean, Champaign and Ford, to Forrest in Livingston County, in the State of Illinois, and through the Counties of Livingston and LaSalle from Fairbury to Streator in said State, from Alta-

mont, in the County of Effingham, State of Illinois, to Shumway in said County; from Forrest through the Counties of Livingston, Kankakee, Will and Cook in the State of Illinois to or near the City of Chicago in said State; from Edwardsville, Madison County, Illinois, to Edwardsville Crossing in said County; from Detroit, in the State of Michigan, in a southwesterly direction, into or through the Counties of Wayne, Washtenaw, Monroe and Lenawee, in the State of Michigan, and from thence into or through the Counties of Fulton and Williams, in the State of Ohio, and into or through the County of DeKalb to Butler in the State of Indiana; from the City of St. Louis, State of Missouri, by the way of North Market Street and Bellefontaine to Ferguson in the County of St. Louis; from the Union Depot in the said City of St. Louis by way of Forest Park to Ferguson and from thence in a northwesterly direction into and through the Counties of St. Louis, St. Charles, Warren, Montgomery, Audrain, Boone and Randolph in the State of Missouri to Moberly, in said State (including the bridge over the Missouri River at St. Charles), and from thence in a westerly direction into or through the Counties of Randolph, Chariton, Carroll, Ray, Clay and Jackson in the State of Missouri to Kansas City in said State; from Brunswick in a northwesterly direction through the Counties of Chariton, Linn and Livingston, in the State of Missouri, to Chillicothe, in said State; from Chillicothe, in said County of Livingston, to Elm Flats, near the town of Pattonsburg, in the County of Daviess, State of Missouri; from Salisbury in the County of Chariton, State of Missouri, to Glasgow in Howard County; from Moberly in a northerly direction through the Counties of Randolph, Macon, Adair and Schuyler in the State of Missouri, and from thence into or through the Counties of Appanoose, Davis and Wapellow in the State of Iowa to Ottumwa in said State and from Centralia, in the County of Boone, State of Missouri, to Columbia in said County and State.

2. The railroad extending from Montpelier in the County of Williams, State of Ohio, in an easterly direction, into or through the Counties of Williams, Fulton and Lucas in said State of Ohio to a point of connection with the railroad of the Railway Company at or near Maumee in said

County of Lucas; from New Haven in the County of Allen, State of Indiana, into or through said County and the County of DeKalb in said State to a point of connection with the railroad of the Railway Company at or near Butler in said County of DeKalb; from a point of connection with the railroad of the Railway Company in the town of Montpelier in the County of Williams, State of Ohio, and extending in a westerly direction through said County and into or through the Counties of Steuben, La Grange, Noble, Elkhart, St. Joseph, La Porte, Porter and Lake in the State of Indiana, to a point of connection with the tracks of The Baltimore and Ohio Chicago Terminal Railroad Company at or near Clarke Junction, in the State of Indiana.

3. The railroad extending from the grounds of the Union Pacific Transfer in the City of Council Cluffs, Iowa, and from the freight depot of the Railway Company, in the City of Council Bluffs, to a connection with the line from the Union Pacific Transfer, through the Counties of Pottawattamie, Mills, Fremont and Page in said State of Iowa, and the Counties of Atchison, Nodaway, Gentry and Daviess in the State of Missouri to Elm Flats near Pattonsburg, in said County of Daviess and State of Missouri.

[fol. 32] 4. The railroad extending from a point of connection in or near the City of Des Moines with the tracks of the Des Moines Union Railway Company and extending from thence in a southeasterly direction through the Counties of Polk, Marion and Monroe to the Town of Albia in said County of Monroe; from Albia in said County of Monroe thence in a southerly direction through the Counties of Monroe and Appanoose to a point in or near the town of Moulton in said County of Appanoose.

5. The railroad formerly belonging to the Champaign and Southeastern Railroad Company, extending from Champaign to Sidney, in the County of Champaign, State of Illinois.

6. The railroad formerly belonging to The Attica, Covington and Southern Railway Company, extending from Attica to Covington in the County of Fountain, State of Indiana;

together with all rights of way lands and other lands, all stations and depots, terminal facilities, yards, roadbeds, rails, tracks, sidetracks, switches, turn-tables, fences, bridges, viaducts, culverts, embankments, platforms, sheds, machine and other shops, machinery, elevators, warehouses, car houses, engine houses, freight houses, coal houses, wood houses, power houses, buildings, structures, tools, implements, telegraph, telephone and electric power transmission lines, water stations, water reservoirs, and water pipe lines, and other water facilities, wharves, docks, piers, landings, ferries and appurtenances, engines, cars and other rolling stock and equipment hereinafter more particularly described. Also all records and books of accounts.

* * * * * * * * *

[fol. 33]

Sinking Funds.

Cash in hands of Trustee for Sinking Fund purposes:	
Central Hanover Bank & Trust Co., N. Y., under Detroit & Chicago Extension Mortgage	$ 373.53
Deposits in Lieu of Mortgage Property Sold.	
Cash in hands of Central Hanover Bank & Trust Co., Trustee of First Mortgage Wabash R. R. Co., account deposit in lieu of mortgage property sold	26,240.18
Rails and Fastenings Leased.	
Leased to Jennison Wright, Toledo, Ohio	$ 756.39
Leased to Cooley Gravel Co., Sampsel, Mo	1,001.12
Leased to Missouri Valley Bridge and Iron Co., St. Charles, Mo	3,058.50
	4,816.01

Securities.

Stocks as follows:	No. Shares	Par Value
Ann Arbor R. R. Co., The—Preferred.	1,100	$ 110,000.00
Ann Arbor R. R. Co., The—Common.	721	72,100.00
Belt Railway Co. of Chicago	2,400	240,000.00
Brunswick & Chillicothe R. R. Co.	4,340	434,000.00
Des Moines Union Railway Co.	1,500	150,000.00
Detroit and Western Railway	500	50,000.00
Fort Wayne & Detroit R. R. Co.	270	27,000.00
Fort Wayne Union Railway Co.	200	20,000.00
Green Real Estate Company	23,700	No Par Value
Hannibal Bridge Company	721	72,100.00
Hannibal Union Depot Company	80	8,000.00
K. C. Excelsior Spgs. & Nor. Ry., Co.	1,000	100,000.00

Kansas City Terminal Railway Co.	5	500.00	
Kansas, Oklahoma and Gulf Ry. Co.	6	600.00	
Keokuk Union Depot Company	200	20,000.00	
Lake Erie & Fort Wayne R. R. Co.	4,000	100,000.00	
Mo. & Ill. Bridge & Belt R. R. Co.	130	13,000.00	
Railway Express Agency, Inc.	12	No Par Value	
St. L., Coun. Bluffs & Omaha R.R.Co.	7,299	729,900.00	
Terminal R. R. Assn. of St. Louis	2,058	205,800.00*	
Toledo & Chicago R. R. Co.	250	25,000.00	
Toledo and Western Railway Co.	1,000	100,000.00	
Toledo Central Station Ry. Co.	1,000	100,000.00	
Wabash Motor Transit Co.	1,000	No Par Value	
Wheeling & Lake Erie Ry. Co.	3,316	331,657.20	
Wabash Ry. Co.—Common and Scrip.	1,156	115,661.08	
Wabash Ry. Co.—Pref. "A" and Scrip	1,222	122,206.58	
Wabash Ry. Co.—Preferred "B"	1,344	134,400.00	3,281,924.86

† Includes 1,000 shares held in escrow by Iowa-Des Moines National Bank and Trust Co., Trustee, as per agreement with Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

*Represents membership in Terminal R. R. Association of St. Louis. Not transferable.

[fol. 34]

Bonds as follows:	No. Bonds	Par Value	
Chicago & Western Indiana R. R. Co. Consolidated Mortgage Bonds	5	$ 5,000.00	
Fort Wayne Union Ry. Co. General Mortgage Bonds, Series "A"	24	24,000.00	
Manistique & Lake Superior R. R. Co. First Mortgage Bonds	1,100	1,100,000.00	
Chicago, Peoria & St. Louis Ry. Co.		10,432.80	
The Wabash Railroad Co. First Mortgage Bond scrip—Due Bill		101.99	
The Wabash Railroad Co. Second Mortgage Bond scrip—Due Bill		146.75	
Detroit and Chicago Extension First Mortgage Bonds	57	57,000.00	
The Wabash Railroad Co. First Lien Terminal Gold Bond—Due Bill		689.23	
The Wabash Railroad Co. Debenture Bonds, Series "B" and scrip	1	10,200.00	$1,207,570.77
Notes as follows:			
Kansas City Terminal Ry. Co.		$ 30,266.23	
City of East St. Louis, Ill. Certificate of Interest		1,000.00	31,266.23

Securities Pledged.

Stocks as follows:	No. Shares	Par Value	
Chase National Bank, Trustee, Wabash Ry. Co. Refunding & General Mortgage:			
The Ann Arbor R. R. Co. Preferred	38,582	$3,858,200.00	
The Ann Arbor R. R. Co. Common	31,689	3,168,900.00	
Green Real Estate Co	120,000	No Par Value	
Wabash R. R. Co. First Mortgage, Second Mortgage, Debenture Mortgage and Wab. Ry. Co. Refunding & General Mortgage, held by New York office of Wabash Ry. Co.:			
Chicago & Western Indiana R. R. Co	10,000	1,000,000.00	
New York Trust Co., Trustee, under Des Moines Division Mortgage:			
Des Moines & St. Louis R. R. Co	20,000	2,000,000.00	
Des Moines Union Ry. Co	500	50,000.00	
Moulton, Albia & Des Moines R. R. Co	100	10,000.00	
Pioneer Trust Co., Kansas City, Trustee under Kansas City Terminal Stock Trust Agreement:			
Kansas City Terminal Ry. Co.	1,828⅓	182,833.33	
Central Hanover Bank & Trust Co., New York, for equal and pro rata benefit of holders of Wabash Ry. Co. Notes amounting to $9,750,000.00 due Aug. 19, 1932:			
American Refrigerator Transit Co.	1,217	121,700.00	
Lehigh Valley R. R. Co	258,929	12,946,450.00	
New Jersey, Indiana & Illinois R. R. Co	8,250	825,000.00	$24,163,083.33

[fol. 35] Bonds as follows:	No. Bonds	Par Value
Chase National Bank, Trustee, Wabash Ry. Co. Refunding & General Mortgage:		
The Ann Arbor R.R.Co. Improvement & Extension Mortgage Bonds	2,165	$2,165,000.00
The Wabash R.R.Co. Debenture Bonds, Series "B" and Scrip	119	1,037,924.00

Central Hanover Bank & Trust Co., New York, for equal and pro rata benefit of holders of Wabash Ry. Co. Notes amounting to $9,750,000.00 due August 19, 1932:			
The Wabash R.R.Co. First Lien Terminal Gold Bonds	508	508,000.00	$3,710,924.00

****

Dated February 26, 1932.

Respectfully submitted,
WALTER S. FRANKLIN and
FRANK C. NICODEMUS, JR.,
Receivers, Wabash Railway Company.
By Walter S. Franklin,
One of the Receivers.

Clerk's Note: This copy is restricted as per praecipe of appellant.

[fol. 36] (Resignation of Walter S. Franklin as Receiver.)

Wabash Railway Company
Railway Exchange Building

St. Louis, Mo.,

October 19, 1933.

Walter S. Franklin,
Frank C. Nicodemus, Jr.,
Receivers,

9704.

Honorable Charles B. Davis,
United States District Judge,
St. Louis, Missouri.

Dear Sir:—

As I have explained to you in conference I have been elected by the Board of Directors of The Pennsylvania Railroad to the position of Vice-President in Charge of Traffic. The reasons which lead me to accept this appointment have been fully explained and accepted by you as sufficient under the circumstances.

I, therefore, tender my resignation as one of the Receivers of the Wabash Railway Company.

It has been an honor and a pleasure to serve as one of your Receivers and I retire with many regrets.

Yours very truly,

WALTER S. FRANKLIN.

Filed Oct. 19, 1933. Jas. J. O'Connor, Clerk.

[fol. 37] (Order Accepting Resignation of Walter S. Franklin as Receiver.)

Walter S. Franklin, by letter dated October 19th, 1933, having tendered his resignation as one of the Receivers of Wabash Railway Company appointed by order of this Court dated December 1, 1931, and due deliberation having been had thereon, it is

Ordered, Adjudged and Decreed by the Court:

That the resignation of Walter S. Franklin as one of the Receivers of Wabash Railway Company, tendered by letter dated October 19th, 1933, herewith filed, be and the same is hereby accepted, jurisdiction as to the matter of final compensation being hereby reserved.

CHARLES B. DAVIS,
District Judge.

Dated October 1933.

Filed Oct. 19, 1933. Jas. J. O'Connor, Clerk.

[fol. 38] (Order Appointing Norman B. Pitcairn as Receiver in the place of Walter S. Franklin.)

The Court having this day accepted the resignation of Walter S. Franklin, one of the two Receivers heretofore appointed in this cause by order filed December 1, 1931, and it being represented to the Court that it is for the best interest of the receivership estate that a successor Receiver be appointed to serve with the remaining Receiver, and on motion of the Complainant and the Defendant, Wabash Railway Company appearing by counsel and assenting thereto, and due deliberation being had, it is:

Ordered, Adjudged and Decreed by the Court:

That Norman B. Pitcairn be and he is hereby appointed Receiver to serve with Frank C. Nicodemus, Jr., of all and singular the railroads, lands, property, assets, rights and franchises of Wabash Railway Company, of which Walter S. Franklin and Frank C. Nicodemus, Jr., were appointed Receivers by order of this Court filed and entered on December 1, 1931, and more particularly mentioned or described or referred to in said order, reference thereto being hereby had and made; and it is

Further Ordered, Adjudged and Decreed by the Court:

That each and every provision of each and all orders of this Court heretofore entered herein shall extend and apply to the Receiver hereby appointed so that said Receiver shall have and possess and be entitled to exercise any and [fol. 39] all powers granted to and be required to perform all duties imposed upon the Receivers heretofore appointed by this Court as fully and to the same extent as if said Norman B. Pitcairn instead of Walter S. Franklin had been originally appointed and named as one of the Receivers in this cause; and it is

Further Ordered, Adjudged and Decreed by the Court:

That the Receiver hereby appointed is required within ten (10) days from this date to be substituted as one of the principals in the place and stead of Walter S. Franklin in the bond heretofore executed by Walter S. Franklin and Frank C. Nicodemus, Jr., and filed herein December 3, 1931.

CHARLES B. DAVIS,
District Judge.

Dated October , 1933.

Filed Oct. 19, 1933. Jas. J. O'Connor, [Clker].

[fol. 40] Partial Report of Forrest C. Donnell, Special Master.

(Filed Mar. 7, 1936.)

Comes now Forrest C. Donnell, the duly appointed and Acting Special Master in the above-entitled cause, and presents to the Court this partial report, as follows:—

Paragraph One.

That he did give, to each claimant in Paragraph Three hereof mentioned, proper and timely notice of the time and place in the City of St. Louis, Missouri, when such claimant would be given an opportunity to present and make proof, before said Special Master, of the amount of the respective claim of said claimant and the lien and priority, if any, thereof and to present the objections, if any, of such claimant to the allowance of claims of other creditors presented to said Special Master; and further that all the solicitors of record in this cause were given timely notice of the time and place of each of said hearings.

[fol. 41] Paragraph Two.

That he submits to the Court the following:—

3. In the matter of the claim of Peter J. Carpenter, Claimant.

This claim is based upon a judgment in the amount of $15,000.00, with interest, which judgment was entered on the 13th day of February, 1931, in the Circuit Court of the City of St. Louis, Missouri and from which judgment an appeal was taken by Wabash Railway Company to the Supreme Court of the State of Missouri. Pursuant to the mandate of the Supreme Court of Missouri, the Circuit Court of the City of St. Louis did on July 6, 1934 order that the verdict and judgment theretofore rendered in favor of the plaintiff for the sum of $15,000.00 be set aside and vacated and for naught held and that a new judgment be rendered in favor of Claimant and against Wabash Railway Company as of February 13, 1931 in the sum of $10,000.00; and said Circuit Court did on the 6th day of July, 1934 accordingly adjudge that Claimant have and recover of the Wabash Railway Company the sum of $10,000.00 with interest thereon at the rate of 6% per annum from February 13, 1931 until paid, together with the costs of the suit wherein said judgment was rendered. A certified copy of the judgment of said Circuit Court rendered July 6, 1934 was filed with this Special Master. Counsel appearing on behalf of Wabash Railway Company and on behalf of the

Receivers of said last mentioned Company did before this Special Master agree that the claim of said Claimant be allowed as set out in said judgment of July 6, 1934.

[fol. 42] Paragraph Three.

That this Special Master has considered the claim of each Claimant named in this Paragraph Three, and, being fully advised in the premises, hereby concludes that each said claim to the extent and in the sum below set out opposite the name of the Claimant who or which makes such claim is correct and valid and should be allowed in said respective sum as a general unsecured claim, that judgment should be entered thereon in the above entitled cause in favor of said claimant and against defendant Wabash Railway Company in said sum, and that said claim is not entitled to any lien or to any priority over other general unsecured claims; and that said Special Master has, subject to such if any objections to the allowance of such claim that may after the date of the filing of this report be presented by any person entitled to present the same, determined that he shall and he hereby does report to the Court (a) that to the extent and in the sum below set out respectively opposite the name of the Claimant who or which makes such claim, each such claim is correct and valid and should be allowed in said respective sum as a general unsecured claim, and that judgment should be entered thereon in the above entitled cause in favor of said claimant and against defendant Wabash Railway Company in said sum, the names of said claimants and said sum so respectively set out opposite the name of each, being as follows, to-wit:

Name of Claimant	Sum
Peter J. Carpenter	$10,587.15

(b) that no one of said claims is entitled to any lien or to any priority over other general unsecured claims, and (c) that this report is made without prejudice to the said Annie Winn, Administratrix of the Estate of George Winn, deceased, to renew her claim for priority if leave of court to renew the same be granted her.

[fol. 43] Paragraph Four.

That herewith filed is a transcript of the proceedings before this Special Master with respect to the claim of each claimant in Paragraph Three hereof mentioned.

Dated this 7th day of March, 1936.

FORREST C. DONNELL,
Special Master.

Clerk's Note: The foregoing copy of original, restricted as per praecipe.

[fol. 44] (Record Entry of Filing of Bill of Complaint of Chase National Bank of New York, as Trustee; Causes Nos. 9704 and 12099 consolidated; Norman B. Pitcairn, et al., appointed as Receivers in consolidated cases.)

Before Judge Davis—Court No. 1.

March 1, 1937.

Now comes the plaintiff, and by leave of the Court files herein, its bill of complaint, as trustee under Wabash Railroad Company Refunding and General Mortgage, dated January 1, 1925.

And now the separate entry of appearance is filed by defendants Wabash Railway Company, Norman B. Pitcairn and Frank C. Nicodemus, Receivers of Wabash Railway Company, and T. J. Moss Tie Company.

And now upon petition of plaintiff this day filed and presented, order is filed and entered consolidating causes No. 9704 and 12099, as consolidated cause 12099 and appointing Norman B. Pitcairn and Frank C. Nicodemus, Jr., as Receivers in said Consolidated cause, etc.

[fol: 45] (Order Consolidating Cases Nos. 9704 and 12099 and Appointing Norman B. Pitcairn, et al., as Receivers in Consolidated Cases.)

Order No. 409.

In the District Court of the United States For the Eastern District of Missouri, Eastern Division.

T. J. Moss Tie Company, Complainant,
No. 9704. vs. In Equity.
Wabash Railway Company, Defendant.

The Chase National Bank of the City of New York, as Trustee, Plaintiff,
No. 12,099. vs. In Equity.
Wabash Railway Company, Norman B. Pitcairn and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, and T. J. Moss Tie Company, Defendants.

Upon consideration of the petition of The Chase National Bank of the City of New York, as trustee under Wabash [fol. 46] Railway Company Refunding and General Mortgage dated January 1, 1925, filed herein, it is hereby

Ordered, Adjudged and Decreed by the Court:

1. That said The Chase National Bank of the City of New York (hereinafter called the Chase National Bank), as trustee under the Refunding and General Mortgage dated January 1, 1925 (hereinafter called the Refunding and General Mortgage), of Wabash Railway Company (hereinafter called the Railway Company), is granted permission to appear specially in the above entitled cause No. 9704 for the sole purpose of filing and being heard on its petition for an order appointing receivers, consolidating causes, and granting other relief.

2. That Norman B. Pitcairn and Frank C. Nicodemus, Jr., heretofore appointed in the above entitled cause No. 9704 receivers of all the property of the Railway Company, real, personal and mixed, of whatever kind or description and wherever situated, be and hereby are appointed in the above entitled cause No. 12,099 receivers of all the property of the Railway Company, real, personal and mixed, of whatever kind or description and wherever situated (other than

the bonds, shares of stock and indebtedness pledged with and now in the possession of said petitioner, as trustee under the Refunding and General Mortgage, or conveyed, transferred and assigned to said petitioner, as trustee as aforesaid, by indentures supplemental to the Refunding and General Mortgage), subject to the lien of the Refunding and General Mortgage, and of the income from said property.

[fol. 47] 3. That said Norman B. Pitcairn and Frank C. Nicodemus, Jr., as receivers as aforesaid of all of said property of the Railway Company subject to the lien of the Refunding and General Mortgage, be and hereby are vested with all the powers conferred upon them in and by the orders of their appointment as receivers in the above entitled cause No. 9704.

4. That the bond heretofore given by said Receivers in the above entitled cause No. 9704 for the faithful performance of their duties shall extend to and cover the liability of said Receivers as receivers as aforesaid of said property of the Railway Company subject to the lien of the Refunding and General Mortgage, upon the filing in the office of the Clerk of this Court of the consent thereto of the surety thereon, as well as the consent of said Norman B. Pitcairn and Frank C. Nicodemus, Jr., as receivers.

5. That said Receivers shall segregate and sequester for the benefit of the Chase National Bank, as trustee under the Refunding and General Mortgage, and of the holders of the bonds outstanding thereunder, all the income from said property subject to the lien of the Refunding and General Mortgage, and apply the same to and for their benefit, subject only to such expenses and other uses as may lawfully and properly be incurred in the operation and preservation of said property, having due regard for the rights of said trustee and of the holders of said bonds, and for the protection of the security of the lien of the Refunding and General Mortgage.

6. That the above entitled causes, to-wit, cause No. 9704 and cause No. 12,099, be and hereby are consolidated into [fol. 48] one cause and hereafter shall proceed under the following number and style, to-wit:

The Chase National Bank of the City of New York, as Trustee, Plaintiff,
No. 12,099. vs. In Equity.
Wabash Railway Company, et al., Defendants.
Consolidated Cause.

7. That the appointment hereby of said Norman B. Pitcairn and Frank C. Nicodemus, Jr., as receivers as aforesaid of all said property subject to the lien of the Refunding and General Mortgage is without prejudice to the right of the Chase National Bank, as trustee as aforesaid, or of any holder or holders of the bonds outstanding under the Refunding and General Mortgage, to take any action to which their respective interests would otherwise entitle them.

Dated 3-1, 1937.

CHARLES B. DAVIS,
District Judge.

Filed Mar. 1, 1937. Jas. J. O'Connor, Clerk.

[fol. 49] (Record Entry of Granting of Leave to Central Hanover Bank and Trust Company to file Petition for Leave to file Bill of Complaint.)

November 1, 1937.

Now upon petition of Central Hanover Bank & Trust Co., as trustee under the First Mortgage of the Wabash Railway Co., dated May 1, 1889, this day filed and presented, order filed and entered granting said petitioner leave to file bill of complaint.

Now comes Central Hanover Bank & Trust Company, as trustee under the First Mortgage of the Wabash Railroad Co., dated May 1, 1889, by its solicitor, and files and presents to the Court its petition for order consolidating causes Nos. 9704 and 12099 and 12357, and order filed and entered appointing Norman B. Pitcairn and Frank C. Nicodemus, Jr., as receivers of Wabash Railway Company, and consolidating causes Nos. 9704, 12099 and 12357, as consolidated cause No. 12099.

[fol. 50] (Order Consolidating Cases Nos. 9704, 12099 and 12357 as Consolidated Case No. 12099 and appointing Norman B. Pitcairn, et al., as Receivers in such Consolidated Cause.)

Order No. 460.

In the District Court of the United States For the Eastern District of Missouri, Eastern Division.

The Chase National Bank of the City of New York, as Trustee, Plaintiff,
No. 12,099. vs. In Equity.
Wabash Railway Company, et al., Defendants.

Central Hanover Bank and Trust Company, as Trustee under the First Mortgage of The Wabash Railroad Company, dated May 1, 1889, Complainant,
No. 12,357. vs. In Equity.
Wabash Railway Company, Manufacturers Trust Company, as Successor Trustee under the Second Mortgage of The Wabash Railroad Company, dated February 1, 1889, Bankers Trust Company, as Successor Trustee under the Debenture Mortgage of The Wabash Railroad Company, dated July 1, 1889, and The Chase National Bank of the City of New York, as Trustee under the Refunding and General Mortgage of Wabash Railway Company, dated January 1, 1925, Defendants.

Consolidated Cause.

And in Constituent Causes in Equity Nos. 9,704 and 12,099.

[fol. 51] This cause came on further to be heard at this term and was argued by counsel; and thereupon upon consideration thereof it was

Ordered, Adjudged and Decreed as follows:

1. That Central Hanover Bank and Trust Company, as Trustee under the First Mortgage of The Wabash Railroad Company, dated May 1, 1889, be and it hereby is granted leave to appear specially in the above entitled consolidated cause in Equity No. 12,099 and in the constituent causes thereof for the purpose of filing its petition verified No-

vember 1, 1937, for an order consolidating causes and other relief.

2. That Norman B. Pitcairn and Frank C. Nicodemus, Jr., heretofore appointed in constituent cause in equity No. 9,704 Receivers of all of the property of Wabash Railway Company and hertofore appointed in constituent cause in equity No. 12,099 Receivers of all the property of Wabash Railway Company subject to the lien of the Refunding and General Mortgage dated January 1, 1925, of Wabash Railway Company under which The Chase National Bank of the City of New York as trustee (other than the bonds, shares of stock and indebtedness pledged with and now in the possession of, or conveyed, transferred and assigned to, said trustee), be and they hereby are appointed in the above entitled cause No. 12,357 Receivers of all and singular the property, real, personal and mixed, of whatsoever [fol. 52] kind and description and wheresoever situate covered by and embraced in said First Mortgage as a lien prior and superior to the lien of said Refunding and General Mortgage (other than the securities and cash held by Central Hanover Bank and Trust Company as Trustee thereunder) and of all the tolls, rents, revenues, income, issues and profits thereof, with the usual powers of receivers in such cases and with full power and authority to enter upon, take possession of and manage, operate and control all of the lines of railroad or other property, real, personal and mixed, so covered by and embraced in said First Mortgage and to collect and receive the tolls, rents, revenues, income, issues and profits thereof.

3. That the bond heretofore given by said Receivers in said cause in equity No. 9,704 for the faithful performance of their duties shall extend to and cover the liability of said Receivers as Receivers as aforesaid of the property so covered by and embraced in said First Mortgage, upon the filing in the office of the Clerk of this Court of the consent thereto of the surety thereon, as well as the consent of said Norman B. Pitcairn and Frank C. Nicodemus, Jr., as Receivers.

4. That the above entitled cause in equity No. 12,357 be and it hereby is consolidated with the above entitled consolidated cause in equity No. 12,099 and with the con-

stituent causes thereof and said consolidated cause in equity No. 12,099 shall hereafter continue under the following number and style:

[fol. 53] The Chase National Bank of the City of New York, as Trustee, Plaintiff,
No. 12,099. vs. In Equity.
Wabash Railway Company, et al., Defendants.

Consolidated Cause.

5. The court reserves for later determination the question of the sequestration and impounding of the income from the property subject to said First Mortgage.

Dated November 1, 1937.

CHARLES B. DAVIS,
United States District Judge.

Filed Nov. 1, 1937. Jas. J. O'Connor, Clerk.

[fol. 55] Supplemental Order On Bill of Complaint of Central Hanover Bank and Trust Company, as Trustee Under the First Mortgage of the Wabash Railway Company, Dated May 1, 1889.

Order No. 462.

Upon further consideration of the Bill of Complaint of the Central Hanover Bank and Trust Company, as Trustee under the First Mortgage of the Wabash Railway Company, dated May 1, 1889, and the Court being fully advised in the premises, it is:

Ordered, Adjudged and Decreed as follows:

That Central Hanover Bank and Trust Company, as Trustee under said First Mortgage, is entitled to have all the tolls, rents, revenues, income, issues and profits, of all of the property of Wabash Railway Company subject to the lien of said First Mortgage, as a lien prior and superior to the lien of said Refunding and General Mortgage sequestered and impounded for its benefit and for the benefit of the holders of the Bonds outstanding under said First Mortgage from and after October 31, 1937, and said Receivers be and they hereby are directed to sequester and

impound for the benefit of Central Hanover Bank and Trust Company as Trustee as aforesaid, and the holders of the Bonds outstanding under said First Mortgage, all the tolls, rents, revenues, income, issues and profits of said property and every part thereof subject to the lien of the First Mortgage as a lien prior and superior to the lien of said Refunding and General Mortgage and, after deducting the expenses of operating said lines of railroad and other property so covered by said First Mortgage and the cost of all improvements made and all taxes that may accrue thereon as well as just and reasonable compensation [fol. 56] for the services and expenses of the Complainant in the above entitled cause in equity No. 12,357 in and about the premises, apply the same, when and as directed by order or orders of this Court hereafter to be entered, ratably to the payment of the interest on said Bonds in the order in which the same shall have become due, all as provided in said First Mortgage, or otherwise for the benefit of the Central Hanover Bank and Trust Company, as Trustee as aforesaid, and the holders of the Bonds outstanding under said First Mortgage; provided, however, that the Receivers shall not be required to make an actual segregation on their books of the tolls, rents, revenues, income, issues and profits so impounded unless and until so directed by further order of this Court.

Dated November 4, 1937.

CHARLES B. DAVIS,
United States District Judge.

Filed Nov. 4, 1937. Jas. J. O'Connor, Clerk.

[fol. 57] (Notice of Peter J. Carpenter for Leave to File Petition for Order Terminating Receivership of Wabash Railway Company, etc.)

(Filed January 26, 1938.)

In the District Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri.

T. J. Moss Tie Company, Complainant,

vs.

Wabash Railway Company, Defendant.

(Constituent Cause In Equity No. 9704.)

The Chase National Bank of the City of New York, as Trustee, Complainant,
No. 12,099. vs. In Equity.
Wabash Railway Company, et al., Defendants.

(Constituent Cause In Equity No. 12,099.)

Central Hanover Bank & Trust Company, as Trustee under the First Mortgage of the Wabash Railroad Company, dated May 1, 1889, Complainant,
vs.
Wabash Railway Company, et al., Defendants.

(Constituent Cause In Equity No. 12,357.)

Consolidated Cause.

[fol. 58] To: T. J. Moss Tie Company or Williams, Nelson & English, Its Counsel of Record,

Wabash Railway Company or Nat S. Brown, Its Counsel of Record,

The Chase National Bank of the City of New York or Nagel, Kirby, Orrick & Shepley, Its Counsel of Record,

Central Hanover Bank & Trust Company or Fordyce, White, Mayne, Williams & Hartman,

Frank C. Nicodemus and Norman B. Pitcairn, Receivers of Wabash Railway Company or Nat S. Brown, Their General Counsel.

You Are Hereby Advised, that on January 26th, 1938, at 10:00 o'clock in the forenoon, or as soon thereafter as Counsel can be heard, Peter J. Carpenter, by his counsel, will, in Division No. 1 of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, present to the Court, in the above entitled Consolidated Cause, his Application, (a copy of which is hereto attached) for leave to file in the above entitled Consolidated Cause, his Petition, (a copy of which is here-

to attached) for an Order terminating the receivership of Wabash Railway Company and dissolving temporary restraining order and injunction.

HYMAN G. STEIN,
MARK D. EAGLETON,
(By H. G. S.)
Attorneys for Peter J. Carpenter.

Copy of the above Notice and of the Application and of the Petition therein mentioned received this 25th day of January, 1938.

HOMER HALL,
Attorney for Wabash Railway Co.
per Strasser,

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,
Attorneys for Central Hanover Bank & Trust Co.
By G. C. Stribling,

Attorneys for T. J. Moss Tie Co.

NAGEL, KIRBY, ORRICK & SHEPLEY,
Attorneys for The Chase National Bank of the City of New York.

N. S. BROWN,
Attorney for Frank C. Nicodemus and Norman B. Pitcairn, Receivers.
per L. S. Strasser.

[fol. 59] State of Missouri,
City of St. Louis.—ss.:

David L. Houghtlin, of lawful age, being duly sworn, upon his oath states that he served a true copy of the within Notice, Application and Petition of Peter J. Carpenter for leave to file his Petition For Order Terminating Receivership of Wabash Railway and Dissolving Temporary Restraining Order and Injunction, on and within named T. J. Moss Tie Company, a corporation, this 25th day of

January, 1938, by delivering a copy of said Notice, Application and Petition to A. W. Taylor, Secretary of said T. J. Moss Tie Company, he being in the usual business office of said T. J. Moss Tie Company in the Security Building in the City of St. Louis, Missouri.

DAVID L. HOUGHTLIN.

Subscribed and sworn to before me this 25th day of January, 1938.

(Seal) HARRY SHAPIRO, JR.,
Notary Public.

My commission expires March 25, 1938.

[fol. 60] State of Missouri,
City of St. Louis.—ss.:

William George, being duly sworn, upon his oath states that he delivered a copy of the attached and foregoing "Notice, Application and Petition", this 25th day of January, 1938, to Messrs. William, Nelson and English, by leaving a copy with Richard S. Jones at the office of the said Williams, Nelson and English, Boatmens' Bank Building, St. Louis, Missouri; neither Fred Williams, Earl Nelson or Fred English being in their offices.

WILLIAM GEORGE.

Subscribed and sworn to before me this 25th day of January, 1938.

(Seal) HARRY SHAPIRO, JR.,
Notary Public.

My commission expires March 25, 1938.

[fol. 61] Application of Peter J. Carpenter For Leave to File His Petition For Order Terminating Receivership of Wabash Railway Company and Dissolving Temporary Restraining Order and Injunction.

(Filed Jan. 26, 1938.)

In the District Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri.

T. J. Moss Tie Company, Complainant,

vs.

Wabash Railway Company, Defendant.

(Constituent Cause In Equity No. 9704.)

The Chase National Bank of the City of New York, as Trustee, Complainant,
No. 12,099. vs. In Equity.
Wabash Railway Company, et al., Defendants.

(Constituent Cause In Equity No. 12,099.)

Central Hanover Bank & Trust Company, as Trustee under the First Mortgage of the Wabash Railroad Company, dated May 1, 1889, Complainant,
vs.
Wabash Railway Company, et al., Defendants.

(Constituent Cause In Equity No. 12,357.)

Consolidated Cause.

Now comes Peter J. Carpenter, hereinafter referred to [fol. 62] as "Petitioner", and represents to this Honorable Court:—

I.

On February 15th, 1929, while engaged in the course of his employment as a laborer for Wabash Railway Company (hereinafter referred to as "Railway Company"), Petitioner sustained personal injuries.

Thereafter, Petitioner, in a suit instituted by him in the Circuit Court of the City of St. Louis, Missouri, and styled "Peter J. Carpenter versus Wabash Railway Company, a corporation, Cause No. 142,443-B", sought and prayed a judgment against Railway Company for damages resulting from such injuries, and on February 13th, 1931, the Petitioner did, in said Cause and in said Circuit Court of the City of St. Louis, Missouri, recover a judgment against Wabash Railway Company in and for the sum and amount of Fifteen Thousand Dollars ($15,000.00).

Thereafter, the Wabash Railway Company having taken an appeal from said judgment, to the Supreme Court of Missouri, the said judgment was by the Supreme Court of Missouri duly affirmed upon condition of a remittitur in the sum of $5,000, being agreed to by Petitioner and entered in said Cause, and the Petitioner did agree to such remittitur, and thereupon the said Circuit Court of the City of St. Louis, Missouri, pursuant to said ruling and

judgment of the Supreme Court of Missouri, and in obedience to a mandate of the Supreme Court of Missouri in said cause, did, on July 6, 1934 modify said judgment so recovered by the Petitioner, by entering judgment in favor of the Petitioner and against Wabash Railway Company as of February 13, 1931, in the sum of $10,000., with interest thereon at the rate of 6% per annum from February 13, 1931, until paid, together with the costs of the suit wherein said judgment was rendered. Said judgment in the sum of $10,000., together with interest thereon and costs of court as aforesaid, was, on February 13, 1931, and ever [fol. 63] since has been, and is, a final judgment and due unto Petitioner, and no part thereof has been paid.

II.

At the time Petitioner recovered said judgment, Railway Company was and still is the owner of real property in the City of St. Louis, Missouri, of the reasonable value of more than $800,000.00 and under the applicable laws and statutes of Missouri, Petitioner, by reason of and as the owner of said judgment, did on October 29, 1931, acquire and ever since has had and still has a lien upon all real property in the City of St. Louis, Missouri, owned by Railway Company on October 29, 1931, or any time thereafter. On and since October 29, 1931, Railway Company, was and is the owner of real property of great value and located in Missouri elsewhere than the City of St. Louis.

III.

On December 1st, 1931, in the above entitled Constituent Cause No. 9704, in Equity, wherein T. J. Moss Tie Company is Complainant and the above named Wabash Railway Company, a corporation, is Defendant, this Honorable Court did, by its order and judgment in said Constituent Cause, appoint receivers of all of the railways and property of Railway Company, and further ordered that "all .....persons.....be, and they are hereby restrained and enjoined from interfering with, attaching, levying upon, or in any manner whatsoever disturbing any portion of the

property and premises of which receivers are hereby appointed . . . . .".

Following the filing of the other of the above named Constituent Causes, the said receivership was, by the order of this Honorable Court, extended, as will appear from the files and records herein. The receivers heretofore appointed herein by this Honorable Court are still in pos-
[fol. 64] session and control of and operating all of the railways and property of Railway Company, including the property upon which the Petitioner, as such judgment creditor, has a lien, and are in possession of large sums of money derived from the possession and operation by them of the railways and property of Railway Company.

IV.

The Petitioner desires to file herein his Petition for an order terminating the said receivership of Wabash Railway Company and dissolving the said temporary restraining order and injunction, in the form of the Petition submitted herewith and designated "Petition of Peter J. Carpenter For Order Terminating Receivership of Wabash Railway Company and Dissolving Temporary Restraining Order and Injunction", reference to which Petition is hereby made for a statement of said Petition and the contents thereof and the orders therein and thereby sought by Petitioner.

Wherefore, your Petitioner prays that he be granted leave to file in this Consolidated Cause, in this Court, his said Petition presented herewith, and that an Order permitting the filing of said Petition be made forthwith.

HYMAN G. STEIN,
MARK D. EAGLETON,
(By H. G. S.)
Attorneys for Peter J. Carpenter, Petitioner.

[fol. 65] In the District Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri.

T. J. Moss Tie Company, Complainant,
vs.
Wabash Railway Company, Defendant.

(Constituent Cause In Equity No. 9704.)

The Chase National Bank of the City of New York, as Trustee, Complainant,
No. 12,099. vs. In Equity.
Wabash Railway Company, et al., Defendants.

(Constituent Cause In Equity No. 12,099.)

Central Hanover Bank & Trust Company, as Trustee under the First Mortgage of the Wabash Railroad Company, dated May 1, 1889, Complainant,
vs.
Wabash Railway Company, et al., Defendants.

(Constituent Cause In Equity No. 12,357.)

Consolidated Cause.

Petition of Peter J. Carpenter For Order Terminating Receivership of Wabash Railway Company and Dissolving Temporary Restraining Order and Injunction.

Clerk's Note: (Leave to file denied as per decree filed.)

Comes now Peter J. Carpenter, hereinafter referred to [fol. 66] as "Petitioner", and represents to this Honorable Court:—

I.

As is hereinafter more fully set out, Petitioner, on February 13, 1931, and prior to the commencement of the receivership of Wabash Railway Company herein, did, in the Circuit Court of the City of St. Louis, Missouri, recover a judgment against Wabash Railway Company, on account of damages arising out of personal injuries sustained by him while engaged in the performance of his work and duties as an employee of Wabash Railway Company. Said judgment is now in the principal amount of

$10,000, and under the laws of the State of Missouri is, and at all times since the date thereof, to-wit: February 13, 1931, has been, a lien upon all real property owned by Wabash Railway Company in the City of St. Louis, Missouri at and since the time said judgment was recovered. At, and ever since the time said judgment was recovered, Wabash Railway Company owned and still owns real property located and situate in the City of St. Louis, Missouri, and having a reasonable value of more than $800,000., and which, since the time of their appointment herein, has been in the possession of the Receivers of Wabash Railway Company.

II.

The firm of Kuhn, Loeb & Company, an investment banking organization of New York, has since about 1887 been the banker for and of the Pennsylvania Railroad Company. The Wabash Railway Company was in receivership in 1911, and was re-organized in 1915 under the auspices of said Kuhn, Loeb & Company. In the course of such re- [fol. 67] organization, Kuhn, Loeb & Company obtained control of the Wabash Railway Company, and upon obtaining such control installed William H. Williams as President and Chairman of the Board of Directors of Wabash Railway Company. Relying upon information and belief, Petitioner states that said Kuhn, Loeb & Company had and exercised control of Wabash Railway Company and its financial policies and investments during the year 1926, and at the time Lehigh Valley Railroad Company stock was bought by Wabash Railway Company as hereinafter mentioned, and that the Pennsylvania Railroad Company participated and connived with said Kuhn, Loeb & Company in the course of conduct hereinafter mentioned, whereby Wabash Railway Company purchased and acquired Lehigh Valley Railroad Company stock, and that such acquisition and purchase by Wabash Railway Company of Lehigh Valley Railroad Company stock was brought about by and through the Pennsylvania Railroad Company and said Kuhn, Loeb & Company in connection with and as a part of a program whereby Kuhn, Loeb & Company and the Pennsylvania Railroad Company were undertaking to, and did, acquire for the Pennsylvania

Railroad Company stocks and working control of the Wabash Railway Company and the Lehigh Valley Railroad Company.

In about 1927 the Pennsylvania Railroad Company acquired, and since then has had and owned, approximately 48% of the voting stock of Wabash Railway Company, and thereby has had, and still has, and has exercised working control of Wabash Railway Company, and through the exercise of such control has named the officers, directors and managers of Wabash Railway Company.

[fol. 68] The Pennsylvania Railroad Company in acquiring Wabash Railway Company stock as herein mentioned did not obtain authority from the Interstate Commerce Commission to do so, and in fact did for a long period of time conceal from the Interstate Commerce Commission the fact that it had acquired such stock. Through its said stock ownership and working control of Wabash Railway Company, the said Pennsylvania Railroad Company did, at the time the receivership herein was commenced and for some years next prior thereto, maintain Frank C. Nicodemus, Jr., one of the Receivers herein, and Walter S. Franklin, a former Receiver herein, as Assistant General Counsel and as President respectively of Wabash Railway Company. At or about the time he was appointed receiver of Wabash Railway Company herein, and for some years prior thereto, Norman B. Pitcairn was President of the Detroit-Toledo and Ironton Railroad Company, a subsidiary of the Pennsylvania Railroad Company, and for some years prior to his having become President of said Detroit-Toledo and Ironton Railroad Company, the said Norman B. Pitcairn was a major executive or representative of the Pennsylvania Railroad Company.

III.

The Wabash Railway Company sustained losses of many millions of dollars, and its insolvency was largely caused by the purchase of Lehigh Valley Railroad Company stock, as hereinafter mentioned, and which stock purchases, as hereinafter mentioned, were fraudulent and unlawful and the result of a fraudulent and unlawful course of conduct practiced by persons controlling Wabash Railway Company as herein mentioned. Such fraudulent

conduct, with its enormous loss to Wabash Railway Company, has been generally known to the public for some [fol. 69] time, and has been fully exposed by and through an investigation by the Interstate Commerce Committee of the United States Senate, and was so shocking and contrary to law and equity that following the investigation of Wabash Railway Company, Pennsylvania Railroad Company, and other railroad companies, the Chairman of said Committee, upon the floor of the United States Senate, stated:

"Why, if any member of the Senate did what Mr. Williams, the President of the Wabash did, he would have found himself behind the bars."

and another United States Senator, who had served as an Acting Chairman of said Senate Committee, in substance denounced certain improper activities in connection with the reorganization of bankrupt railroads as

"the greatest racket on earth".

In the course of such investigation it was also established and made known to the public that in connection with the purchase by Wabash Railway Company of Lehigh Valley Railroad Company's stock as herein mentioned, the reports of Wabash Railway Company to the Interstate Commerce Commission were falsified and the books of Wabash Railway Company were so set up as to conceal such purchases.

IV.

Notwithstanding the foregoing facts and conditions, and the existence of the receivership of Wabash Railway Company for more than six years, no action has been taken by said receivers relative to the losses so sustained by Wabash Railway Company, and no action has been taken by them to recover from those responsible, the damages sustained by Wabash Railway Company by reason of the aforesaid improper and unlawful acts. By reason of their busi- [fol. 70] ness association, connection and affiliation with Pennsylvania Railroad Company as herein mentioned, and its improper exercise of control over Wabash Railway Company and its participation in said improper acts as herein mentioned, and by reason of their aforesaid failure

to take any action relative to the losses sustained by Wabash Railway Company as aforesaid, the present receivers herein, Frank C. Nicodemus, Jr., and Norman B. Pitcairn, are not proper persons to hold, and discharge the duties of the office of Receivers of Wabash Railway Company.

V.

Petitioner is informed and believes and therefore states that commencing on or about March 18th, 1926, said Kuhn, Loeb & Company and certain major officers and managers of Wabash Railway Company who were nominees of, and acting under the control of Kuhn, Loeb & Company, engaged in the following course of conduct, action and series of transactions:—

On March 18th, 1926, the Executive Committee of Wabash Railway Company, at a meeting at 10 Broadway, New York City, with the view and purpose of acquiring for Wabash Railway Company with assets of Wabash Railway Company, the effective control of Lehigh Valley Railroad Company, adopted a secret resolution which was withheld from the Minutes submitted to the Stockholders of Wabash Railway Company, and which conferred Carte Blanche powers upon said William H. Williams, President and Chairman of the Board of Directors of Wabash Railway Company, in connection with the acquisition and purchase of Lehigh Valley Railway Company stock.

Powers conferred by such resolution upon said William H. Williams was in the following language:

"The chairman be instructed to investigate and consider the advisability of acquiring the properties or securities, in whole or in part, of some other carrier or carriers, [fol. 71] and with authority, in the judgment and discretion of the chairman, to acquire for the company such securities and properties as he may deem advisable and in the best interests of the company, and may be able to obtain at prices deemed by him to be reasonable, and with further authority to use the funds of the company and, if necessary, to pledge its credit in the acquisition of such properties or securities or both."

For the purpose of screening and concealing the proposed purchases of Lehigh Valley Railroad Company stock, directors of Wabash Railway Company caused to be set up a special deposit at the Equitable Trust Company, a banking institution, with said William H. Williams and J. C. Otterson, Treasurer of Wabash Railway Company as Trustees. Lehigh Valley Railroad Company stock was then purchased through said Kuhn, Loeb & Company and C. D. Barney & Company, brokers of New York City. As further precautions to keep said purchase a secret, all sums of money passed during such transactions were in Cashiers' Checks, and the accounts were entered under designated numerals instead of in the name of Wabash Railway Company.

Purchases of Lehigh Valley Railroad Company stock began in May, 1926, and by December 31st of that year amounted to 58,800 shares, at a cost of $4,930,000. The Accounting Department of Wabash Railway Company in St. Louis, Missouri, was instructed to enter said sum of $4,930,000. among the assets of Wabash Railway Company under the head of "Special Deposit" although such sum had already been disbursed.

During January, 1927, the said Trustees made further purchases of Lehigh Valley Railroad Company stock, reaching a total of 19% of its outstanding shares, or 231,319 shares. More than $23,000,000.00 was paid for such shares of stock so purchased, and such cost continued to be carried on the St. Louis Books of the Wabash Railway Company as a "Special Deposit" until November, [fol. 72] 1927.

VI.

Petitioner is informed and believes and therefore states that the prices paid for Lehigh Valley Railroad Company stock purchased for and on behalf of Wabash Railway Company as aforesaid, were excessive and unreasonable, and that Wabash Railway Company now owns Lehigh Valley Railroad Company stock purchased as aforesaid at a cost of more than $23,000,000.00, and which, at the present time, has a quoted market value of less than $1,500,000.00.

Although the regulations of the Interstate Commerce Commission require that each railroad in its annual re-

port declare not only its total holdings in non-affiliated carriers, but its acquisition of such interest during the year in question, nevertheless the Wabash Railway Company did not, during 1926, disclose to the Interstate Commerce Commission its acquisitions during such year of Lehigh Valley Railroad Company stock, but did, in its 1927 Report to the Interstate Commerce Commission, for the first time, reveal its interest in the Lehigh Valley Railroad Company stock, but represented all the purchases of such stock as having been made during 1927.

Said Kuhn, Loeb & Company collected fees, commissions and profits in the sum of $1,047,782.00 on such transactions whereby Wabash Railway Company purchased and acquired Lehigh Valley Railroad Company stock as aforesaid.

In about January, 1927, Wabash Railway Company applied to the Interstate Commerce Commission for authority to issue its bonds in the principal amount of $15,500,000. and also applied to the New York Stock Exchange for authority to list for trading such bond issue which was floated through said Kuhn, Loeb & Company. In its Annual Report to the Stockholders for the year 1926, and in its said applications to the Interstate Commerce Commission [fol. 73] and the New York Stock Exchange relative to the issue of bonds as aforesaid, there was not disclosed the purchase by Wabash Railway Company as aforesaid, of Lehigh Valley Railroad Company stock, or the amounts owed by it to Kuhn, Loeb & Company for making such purchases, and balance sheets of Wabash Railway Company which were a part of such reports to its Stockholders and a part of such applications to the Interstate Commerce Commission and the New York Stock Exchange also failed to disclose and were so set up as to conceal such purchases of Lehigh Valley Railroad Company stock and amounts owed Kuhn, Loeb & Company in connection therewith.

Such acquisition and purchase for and on behalf of Wabash Railway Company of Lehigh Valley Railroad Company stock was without the knowledge or consent of, and without authority from the Interstate Commerce Commission, or the Stockholders of Wabash Railway Company, and was contrary to law and was contrary to and in violation

of the powers and duties of the officers of Wabash Railway Company participating therein, and resulted in losses to Wabash Railway Company aggregating many millions of dollars, and for such losses Kuhn, Loeb & Company and the others participating in said transactions as aforesaid are, and should be held liable unto Wabash Railway Company and those entitled to share in its assets and estate.

Relying upon information and belief, Petitioner states that Kuhn, Loeb & Company engaged in such course of conduct and series of transactions in utter disregard and violation of the rights and best interests of Wabash Railway Company, and for the purpose of advancing the selfish interest of itself and its associates in such conduct and transactions, and for the purpose of collecting and receiving fees and commissions and profits in excess of $1,000,000.00, and in such transactions Kuhn, Loeb & Company, at great profit to itself, sold to Wabash Railway Company stocks owned or purchased by Kuhn, Loeb & Company, and the officers and directors of Wabash Railway Company participating in such conduct and transactions did so pursuant to a conspiracy among themselves and Kuhn, Loeb & Company to so enable Kuhn, Loeb & Company to make such large profits at the expense of Wabash Railway Company.

[fol. 74] VII.

Petitioner is informed and believes and therefore states that the same interests which brought about such enormous losses to Wabash Railway Company, and which interests include Kuhn, Loeb & Company, the Pennsylvania Railroad Company, their nominees and persons under their control, are still in control of matters pertaining to securities of Wabash Railway Company, and have obtained and possess and are undertaking to exercise such powers as will permit them to direct the course of, and policies relating to, any reorganization of Wabash Railway Company, and it is only by such remedial legislation and supervision and exercise of powers of the Interstate Commerce Commission, as are provided for in Section 77 of the National Bankruptcy Act, that a proper accounting on behalf of the Wabash Railway Company and the protection of the creditors of Wabash Railway Company can be had.

VIII.

The claim of Petitioner on account of which he recovered judgment against Wabash Railway Company as aforesaid is more particularly described as follows:—

On February 15, 1929 Petitioner while engaged in the course of his employment as a laborer for Wabash Railway Company sustained personal injuries. Thereafter Petitioner in a suit instituted by him in the Circuit Court of the City of St. Louis, Missouri, and styled: "Peter J. Carpenter vs. Wabash Railway Company, a corporation, Cause No. 142443-B", sought and prayed a judgment against Wabash Railway Company for damages resulting from such injuries, and on February 13, 1931, the Petitioner did in said cause and in said Circuit Court of the City of St. Louis, Missouri, recover a judgment against Wabash Railway Company in and for the sum and amount of [fol. 75] $15,000. Thereafter, the Wabash Railway Company having taken an appeal from said judgment, to the Supreme Court of Missouri, the said judgment was by the Supreme Court of Missouri duly affirmed upon condition of a remittitur in the sum of $5,000 being agreed to by Petitioner and entered in said cause, and the Petitioner did agree to such remittitur, and thereupon the said Circuit Court of the City of St. Louis, Missouri, pursuant to said ruling and judgment of the Supreme Court of Missouri, and in obedience to a mandate of the Supreme Court of Missouri in said cause, did, on July 6, 1934 modify said judgment so recovered by the Petitioner, by entering judgment in favor of the Petitioner and against Wabash Railway Company as of February 13, 1931 in the sum of $10,000, with interest thereon at the rate of 6% per annum from February 13, 1931, until paid, together with the costs of the suit wherein said judgment was rendered. Said judgment in the sum of $10,000, together with interest thereon and costs of court as aforesaid, was, on February 13, 1931, and ever since has been, and is a final judgment and due unto Petitioner, and no part thereof has been paid.

IX.

As appears from the record herein (printed record page 351 et. seq.), this Honorable Court did by its order in the above mentioned constituent cause of T. J. Moss Tie Com-

pany, Complainant, vs. Wabash Railway Company, Defendant, Cause No. 9704 In Equity, on March 19, 1932, appoint Forrest C. Donnell, Special Master in said cause, and in such order this Honorable Court did order and provide as follows:

"In hearings before the special master he shall proceed in all respects according to the usage and practice in chancery in such cases.

"Before settling his report in any contested case, the special master shall give to the parties in interest reasonable notice of the time when and the place where he will finally settle such report, and of the fact that they may appear before him and file such exceptions to the same as they may desire. Any party to such a case, who feels ag- [fol. 76] grieved at the finding or decision of the special master may, at the time fixed by the special master for settling his report, file any such exceptions in writing to the same as may be deemed appropriate by such party, and no exception not so filed will be considered by the Court. The master will notify all parties interested in the matters presented by petitions in such cases of this fact."

Said order of March 19, 1932, is by this reference thereto hereby made a part hereof.

X.

On July 1, 1938 Petitioner filed his claim with said Special Master, and said claim is by this reference thereto hereby made part hereof. On August 26, 1935, the Petitioner's said claim was heard by and before the Special Master. Counsel appearing on behalf of Wabash Railway Company and on behalf of its receivers did at such hearing before said Special Master state:

"We agree further that the claim be allowed as set out in the judgment."

The Special Master has not given to the Petitioner or to his counsel any notice of the time when, and the place where, the Special Master would finally settle his report relative to such claim or of the fact that Petitioner might appear before him and file any exceptions to such report. Neither the Special Master nor this Honorable Court has

fixed any time, place or manner for or relative to the filing by the Petitioner of any exceptions which the Petitioner might desire to file to the report of the Special Master upon and relative to Petitioner's said claim.

This Honorable Court has not made any order relative to the time, place or manner for the filing of exceptions to any report of the Special Master by any claimant unto whom the Special Master shall not give or have given notice of the time when, and the place where, the Special Master would settle his report and of the fact that such claimant might appear before the Special Master and file such exceptions to any such report, as such claimant might [fol. 77] desire.

XI.

The Special Master, without any notice to the Petitioner or his counsel, filed a report in said constituent cause No. 9704, in substance setting forth that pursuant to the mandate of the Supreme Court of Missouri the Circuit Court of the City of St. Louis, Missouri rendered judgment in favor of Petitioner and against Wabash Railway Company as of February 13, 1931, for the sum of $10,000 with interest thereon at the rate of 6% per annum from February 13, 1931 until paid, together with the costs of the suit wherein said judgment was rendered, and that counsel appearing on behalf of Wabash Railway Company and on behalf of its receivers, did before said Special Master, agreed that the claim of the Petitioner be allowed as set out in the judgment which the Circuit Court of the City of St. Louis, Missouri had entered pursuant to said mandate from the Supreme Court of Missouri, and said Special Master in his said report did further report that he had "subject to such if any objections to the allowance of such claim that may after the date of the filing of this report be presented by any person entitled to present the same, determined that he shall, and he hereby does report to the Court", that the claim of the Petitioner Peter J. Carpenter was correct and valid and should be allowed in the sum of $10,587.15 as a general unsecured claim, and that judgment should be entered thereon in said constituent Cause No. 9704 in favor of said Petitioner and against Wabash Railway Company in said sum, and that such claim

was not entitled to any lien or to any priority over other general unsecured claims.

This Petitioner only recently learned that such report with reference to this claim had been filed by the Special [fol. 78] Master and, as hereinabove stated, he was given no notice of the time when and the place where the Special Master would settle such report or that Petitioner might appear and file exceptions thereto, and Petitioner was given no notice of the filing of such report, and no order has been made by the Special Master or by this Honorable Court relative to the time, place or manner for the filing by the Petitioner of such exceptions to said report as he may desire to file. According to Petitioner's information and belief, no order has been entered by this Honorable Court approving or affirming said report of said Special Master. And this Honorable Court is without right or authority to approve or confirm said report until this Petitioner shall have been afforded the right and reasonable notice and opportunity to file exceptions thereto, and until this Honorable Court shall by its order have fixed the time, place and manner for the filing by Petitioner of such exceptions as he may desire to file to said report. Petitioner for the reasons herein mentioned is entitled to except to such report but has not been able to do so for the reasons above mentioned. For the reasons herein mentioned, and upon, and for the reasons appearing in, the record in the above entitled consolidated cause and in the above entitled constituent cause In Equity No. 9704, said report to the effect that the claim of the Petitioner is a general unsecured claim and not entitled to any lien or priority, is, erroneous in law and fact.

XII.

Although no order has been made relative to the time, place or manner for the filing by Petitioner of exceptions to said report of the Special Master, nevertheless, the Petitioner at about the time that he first learned that [fol. 79] such report had been filed, did file Objections in the above entitled consolidated cause to the proposed plan of reorganization, filed herein, and in such objections did clearly set forth the nature of his claim and that he has a lien and is entitled to priority as in said Objections and

as herein set forth, and said Objections are by this reference thereto, hereby made a part hereof.

XIII.

The filing by Petitioner of his said claim as aforesaid operated to give notice to this Honorable Court and to the Receivers of Wabash Railway Company of Petitioner's judgment and his lien and rights thereunder as herein set forth. The lien and rights of Petitioner as herein set forth were and are within the judicial notice and knowledge of this Honorable Court, and in law and in equity appear upon the record in this consolidated cause, and the record in said constituent cause No. 9704.

XIV.

On December 1, 1931, the above named T. J. Moss Tie Company, as Complainant, instituted in this Court, the above entitled Constituent Cause No. 9704, In Equity, against Wabash Railway Company, as Defendant therein, by the filing of its Bill of Complaint, wherein it alleged in substance, among other things, that Wabash Railway Company was indebted to said Complainant on account of a general claim in the sum of $49,651.95, and that the liabilities of Wabash Railway Company exceeded the actual value of its assets by many millions of dollars. Said Complainant did not allege or claim any lien upon any of the property of Wabash Railway Company. Said Bill of Complaint prayed for the appointment of a Receiver for the property and railways of Wabash Railway Company and for orders incidental thereto.

[fol. 80] Upon the filing of such Bill of Complaint, Wabash Railway Company, by and through its General Solicitor, Nat. S. Brown, on said December 1, 1931, appeared and filed in said Constituent Cause its Answer wherein it admitted all the allegations in such Bill of Complaint contained and in substance joined in such application for the appointment of a Receiver.

Thereupon, this Honorable Court, by its order and judgment in said Constituent Cause, did, on said December 1, 1931, appoint Walter S. Franklin and Frank C. Nicodemus, Jr., then the President and Assistant General Counsel, respectively, of Wabash Railway Company, as

Receivers of all of the railways and property of Wabash Railway Company and further ordered that "all ..... persons ..... be and they are hereby restrained and enjoined from interfering with, attaching, levying upon, or in any manner whatsoever disturbing any portion of the property and premises of which Receivers are hereby appointed ....."

On December 3, 1931, said Nat S. Brown was by this Honorable Court appointed General Counsel for such receivers.

On October 19, 1933, said Walter S. Franklin resigned as such Receiver of Wabash Railway Company and thereupon Norman B. Pitcairn was, by this Honorable Court, appointed as a Receiver of Wabash Railway Company to fill the vacancy caused by such resignation.

XV.

By said judgment and order rendered by this Honorable Court on December 1, 1931, Petitioner has been prevented from collecting his said judgment or any part thereof, and from ordering or levying any execution and from enforcing the lien of said judgment upon the real property owned by Wabash Railway Company in St. Louis, Missouri, at and since the time said judgment was recovered and Petitioner has been prevented and restrained from taking any steps or instituting any proceedings to enforce the payment of said judgment. Moreover, except for said order of December 1, 1931, [fol. 81] the Petitioner would, under the applicable statutes of Missouri, have been entitled upon recording his said judgment in any and all counties in Missouri in which Wabash Railway Company owned or owns real property, to have thereby obtained a lien upon such real property and to have caused execution to be issued and levied upon any and all real property of Wabash Railway Company in such counties in Missouri.

The Receivers of Wabash Railway Company have since the time of said appointment on December 1, 1931, received considerable income and earnings from and on account of the real property of Wabash Railway Company located in the City of St. Louis, Missouri, and from and on account of the real property of Wabash Railway Com-

pany located in Missouri, elsewhere than the City of St. Louis.

XVI.

Between the time the said Receivers were appointed for Wabash Railway Company and April 19, 1937, the Receivers of Wabash Railway Company, pursuant to authority from this court, paid out as and for interest on first mortgage and other underlying bonds an aggregate sum of many millions of dollars, and such payments of interest were out of funds derived by the receivers as income from the possession and the operation by them of the property of Wabash Railway Company and which funds had never been impounded for the benefit of any particular party or parties and were not subject to the lien of any mortgage or mortgages. Prior to March 1, 1937, no petition, proceeding or proceedings were had or filed herein for or on behalf of any bondholder, bondholders, mortgage trustee or mortgage trustees, security or securities whatsoever for the segregation, sequestration and impounding of tolls, income, rents, issue and profits of, or from, the property of Wabash Railway Company in the possession [fol. 82] of said receivers, or any of the same, or for the foreclosure of any mortgage or deed of trust upon any of the property of Wabash Railway Company in the possession of said receivers, or any of the same, or for the foreclosure of any mortgage or deed of trust upon any of the property of Wabash Railway Company in the possession of the receivers, or any part of the same. The receivers now have in their possession, sums of money more than sufficient to pay the claim of Petitioner and others similarly situated, and which moneys were derived by the receivers as income and earnings from and by reason of the possession and operation by them as such receivers of the property of Wabash Railway Company and which are not subject to any lien of any bond, bonds, mortgage, mortgages, deed of trust or deeds of trust.

XVII.

Included in the property and assets of Wabash Railway Company at and for some years prior to the time re-

ceivers were appointed as aforesaid, were and are 357.46 miles of railway and other property in the State of Indiana and which according to Petitioner's belief and information were and are reasonably worth many millions of dollars and such lines of railway and property in the State of Indiana have been operated by the receivers since their appointment and from such operation the receivers have received large amounts of income and earnings. It is the law of the State of Indiana as declared by the Supreme Court of Indiana in the case of McCullough, et al. vs. Union Traction Company of Indiana, et al., 206 Indiana Reports 585, that in the operation of railroads, accidents and injuries to persons and property are unavoidable, and that the payment and settlement of such claims must necessarily be considered as operating expense and that [fol. 83] such claims have a preference and priority over mortgage creditors and that where the use and management of mortgaged property is left in the hands of a mortgagor, he acts, in a sense, as the agent of the mortgages.

XVIII.

In accordance with the authority vested in it by law, the Interstate Commerce Commission made and entered an order effective July 1, 1914, prescribing a classification of operating revenues and operating expenses for the use of carriers by rail, in the keeping of their operating revenues and operating expense accounts, and requiring such carriers to keep all operating revenues and operating expense accounts in conformity therewith. In and by said orders and classifications, it is provided that all damages and costs adjudged against such Railway Company in favor of employees for personal injuries are to be classified as operating expenses.

The claim of Petitioner is, and should be considered as, an operating expense.

XIX.

On March 1, 1937, the Chase National Bank of the City of New York, as trustee, filed in this court, its Bill of Complaint against Wabash Railway Company, et al., and on such date such action was consolidated with the above mentioned Constituent Cause In Equity, No. 9704, and the

receivership was extended as appears from the records in this consolidated Cause.

On November 1, 1937, Central Hanover Bank & Trust Company, as Trustee, filed its Bill of Complaint against Wabash Railway Company, et al., and on such date such action was consolidated with the above entitled Consolidated Cause and the receivership was extended as appears from the records in this Consolidated Cause.

[fol. 84] XX.

Since the time receivers were appointed for Wabash Railway Company on December 1, 1931, as aforesaid, there have been herein practically no proceedings of a constructive nature and looking towards a final disposition of said constituent and consolidated causes, and of the termination of said receivership. The only practical result thus far, with reference to said receivership, is that for a period of more than six years, this Honorable Court has, by and through such receivers, been in charge and control of and operating the Wabash Railway Company and out of the earnings and income thereby received, interest has been paid on first mortgage and other underlying bonds, and betterments of the property have been had, and by such continued possession and operation by the Court of the property of Wabash Railway Company and by the continuance of its said restraining order of December 1, 1931, the Petitioner has been prevented from collecting his said judgment.

XXI.

That this Honorable Court has itself recognized that the receivership herein has been unduly prolonged is evidenced by the fact that by its order herein on April 19, 1937, the Court commented that this receivership had existed for almost five and a half years and that throughout that period the Court had from time to time authorized the receivers to pay interest on said bonds and the Court did deny a petition in said order mentioned for authority to pay interest on the Wabash Railway Company First Mortgage Bonds, and did order that until the further order of the court no further payments of interest on any bonds should be made by the receivers, and did further order

that the security holders of Wabash Railway Company should formulate and file herein, within sixty days from the date of said order "a plan of reorganization of the defendant Railway Company to the end that at the earliest [fol. 85] practicable date the administration of the property and assets of said defendant be withdrawn from this Court and restored to the management and operation of the owners." Since then the court has, however, authorized further payments of interest on bonds of Wabash Railway Company.

That the unusual and prolonged term of this receivership and the aforesaid inactivity of the parties hereto and the said security holders, made it reasonable to assume that the security holders would probably not comply with such order that a plan be filed within sixty days from April 19, 1937, was apparently recognized by a further portion of said order to the effect that in the event of the failure of the security holders to formulate and file a plan of reorganization within the time specified, "then the receivers shall, within thirty (30) days after the expiration of the time fixed in said paragraph 4, formulate and file herein a plan of reorganization .....".

Such assumption has been proven to have been well grounded, for, as appears from the files and records herein, the security holders did not comply with the said order of April 19, 1937, and have not filed any Plan of Reorganization, but the receivers did on or about July 14, 1937, submit a Plan, but said Plan as filed by the receivers, is only in skeleton or chart form and in general is vague and indefinite and can hardly be considered as a Plan of Reorganization, within the ordinary meaning of that term as applied to and used in railroad reorganization proceedings.

No proceedings for the valuation of the property and assets of Wabash Railway Company have been had and the only indication relative to the value thereof are the allegations in said Bill of Complaint T. J. Moss Tie Company, to the effect that the liabilities of Wabash Railway Company exceed by many millions of dollars the actual value of its assets, and the actual value of its assets, [fol. 86] and the admission in said answer of Wabash

Railway Company to the effect that the allegations in said Bill of Complaint are true. Notwithstanding the same, however, said Plan, while not providing for payment in full of this Petitioner's claim and of the claims of others similarly situated, does provide that the present stockholders of Wabash Railway Company shall receive stock to the amount, and as provided, in said Plan.

XXII.

Since the commencement of the receivership herein, there has been enacted Section 77 of the National Bankruptcy Act, providing for the reorganization of railroads engaged in interstate commerce. Said Section 77 provides, among other things, that in proceedings thereunder for the reorganization of railroads engaged in interstate commerce, claims for personal injuries to employees of a railroad corporation shall be preferred against and paid out of the assets of such railroad corporation as operating expenses of such railroad.

Said Section 77 also provides that where a trustee is appointed, who within one year prior thereto has been an officer, director or employee of the debtor corporation, any subsidiary corporation, or any holding company connected therewith, the Judge, subject to ratification by the Interstate Commerce Commission, shall appoint another trustee or trustees, who shall not have had any such affiliation. Said Section 77 also provides that the Judge shall direct the trustee or trustees, and may request the Interstate Commerce Commission, through such of its agencies, as it may designate, to report to him any facts pertaining to irregularities, fraud, misconduct, or mismanagement, as a consequence of which the debtor railroad company may have a cause of action arising therefrom against any person or corporation.

[fol. 87] As stated and recognized by the Supreme Court of the United States in the case of Continental Ill. N. B. & T. Co. vs. Chicago, Rock Island and Pac. Ry. Co., et al., 294 U. S. 648:

"Equity receiverships resorted to for that purpose, (i. e., reorganization of railroads) have never been satisfactory for many reasons. Partly, no doubt, in recognition of

that situation, Congress by paragraph 77, added railroad corporations to the category of those who might have relief by legislation passed in virtue of the bankruptcy clause of the Constitution . . . . . "

A report of the Legislative Committee of the Interstate Commerce Commission was sent to United States Senator Hastings on January 31, 1933, in connection with the study then being conducted by a Senate Committee on proposed legislation relative to Railroad reorganizations. As is stated in such report: "Railroad receiverships and the reorganizations which follow them have been severely criticized . . . . . Conduct of a railroad receivership is a tremendous burden upon a Judge. He has many other duties to perform which engross his attention, and as a rule he has no particular acquaintance with railroad affairs or with their financial, operating and management problem . . . . . Present procedure with respect to railroad receiverships and reorganizations is most unsatisfactory and inconsistent with the public interest, because of:

1. The extravagant and exorbitant expense.

2. The general inability of courts to exercise proper supervision over the proceedings, due to the demands of their other work and their unfamiliarity with railroad affairs. This point was developed by the late Chief Justice Taft as long ago as 1895 in an article which appears in the reports of the American Bar Association, Vol. 18 (1895). An excerpt is attached as an appendix hereto.

[fol. 88] 3. The fact that both the management of the property during receivership and the formulation of the reorganization plan are likely to be dominated by the old company and its bankers, notwithstanding that it was under this regime that the company became entangled in financial difficulties.

4. The fact that the reorganization managers are thus likely to have a closer relation to the stockholders of the old company than to its creditors, and that the widely-scattered creditors have an inadequate opportunity to protect their legitimate interests.

5. The fact that the Commission, which has the final duty under the interstate commerce act [or] protecting the

general public interest with respect to the issuance of railroad securities, is required to exercise this duty under most embarrassing and difficult circumstances, after every other step has been taken and when it must either approve or undo everything which has been done.

As is further stated, in substance, in said report, the Interstate Commerce Commission has been entrusted by Congress with final responsibility for the protection of public interest with respect to the issue of railroad securities and the very essence of railroad organizations is the issuing of new securities, and because of such jurisdiction and its other duties, the Commission is better acquainted with railroad affairs and has more complete information with reference thereto than any court or any other public body possesses, and it also has the assistance of a staff of accounting and financial experts. Also, as pointed out in such report, the powers of the Interstate Commerce Commission under a reorganization, through a receivership of a railroad company, are limited in so far as a plan of reorganization is concerned, for its authority does not extend with reference to the formulation of the plan and its authority is not sought until every other step has been taken, and its authority is therefore limited to an approval or upsetting of the entire plan. Said Section 77 seeks to remedy many of the defects and complaints relative to equity receiverships of railroads and reorganizations thereunder. As appears from said Section 77, considerable powers and supervision have been vested in the Interstate Commerce Commission.

[fol. 89]

XXIII.

The Pennsylvania Railroad Company acquired stock and the effective control of Wabash Railway Company in about the year 1927, as hereinabove stated, without the authority of, or consent from, the Interstate Commerce Commission, and for a long time concealed its ownership of such stock, from the Interstate Commerce Commission, all as is more fully set forth in the report of the Interstate Commerce Commission in an action instituted by such Commission against Pennsylvania Railroad Company et al., and which report is contained in Volume 169 of Interstate Commerce Commission Reports, page 618, and

such report is by this reference thereto hereby made a part hereof. In such report said Commission did hold that the acquisition by Pennsylvania Railroad Company of such stock was in violation of Section VII of the Clayton Act, and directed that the Pennsylvania Railroad Company and its subsidiary the Pennsylvania Company divest themselves of such stocks.

The U. S. Circuit Court of Appeals for the Third Circuit having reversed such decision of the Interstate Commerce Commission (66 Fed. 2d 37) in an opinion pointing out that the Court was not primarily concerned with the economic result of its interpretation of the statute under which the action had been brought, and that the same was a matter for Congress, such opinion of said Appellate Court was upon a Certiorari proceeding affirmed by the Supreme Court of the United States as a result of the Supreme Court being equally divided, Mr. Justice Roberts taking no part in the consideration or decision of the case.

Petitioner is informed and believes, and therefore states that the Pennsylvania Railroad Company since acquiring control of Wabash Railway Company as aforesaid has so [fol. 90] improperly exercised such control, that the Wabash Railway Company has suffered great losses and wasting of its assets, and that Pennsylvania Railroad Company has so exercised its control over Wabash Railway Company as to hinder the Wabash Railway Company in the obtaining of business in competition with the Pennsylvania Railroad Company and its affiliates, and thereby the Wabash Railway Company has sustained great losses.

XXIV.

As reported in Moody's Manual of Investments (Steam Railroads) 1937, an authority on reports relative to the financial structure and practices of corporations:—

"During the several years ended in 1930 there was an almost uninterrupted increase in Wabash Railway's funded report from about $80,000,000. at the end of 1924 to $140,000,000. at the end of 1930. There was a further increase in more recent years with debt outstanding at the end of 1936 of about $155,000,000. or almost twice that out-

standing a little more than a decade earlier. Much of the funds obtained from the sale of the Junior Refunding and General Management Bonds was used for improvement of the property. However, a fair assumption is that not as many bonds would have been sold as were sold had the Company not been purchasing the stocks of other railroads, including Ann Arbor Railroad, Lehigh Valley Railroad and Wheeling & Lake Erie Railway. In this connection, it may be well to point out that the price paid for the stocks of the first two roads were extremely high."

No investigation or inquiry whatsoever has been made or ordered herein with reference to the manner in which the Pennsylvania Railroad Company exercised its control over Wabash Railway Company as aforesaid, or with reference to the losses sustained through the improper exercise of such control by the Pennsylvania Railroad Company, and no action has been taken by the receivers of Wabash Railway Company relative thereto.

[fol. 91] XXV.

The appointment of receivers of a railroad company upon pleadings, such as those upon which the appointment of receivers was made in this case, have been consented to by courts, primarily upon the theory that the same was necessary for the protection of the public interest and welfare, and because there was no other procedure through which the reorganization of a railroad company and the protection of its creditors might be had, without interruption of its business and resulting detriment to the Public. However, since the appointment of receivers herein, there has been enacted as aforesaid Section 77 of the National Bankruptcy Act, providing a comprehensive method for the reorganization of a financially embarrassed or insolvent railroad corporation, and the continuation by this Honorable Court of this receivership herein would be in conflict with the intent of the Congress and President of the United States relative to said Section 77 and would operate to deprive Petitioner and all other parties in interest and the public generally, of the rights, benefits, advantages and safeguards provided and intended by said Section 77.

Moreover, as appears from the record herein, the present receivership of Wabash Railway Company is what is commonly termed and known as a "friendly" receivership, brought about by Wabash Railway Company as aforesaid, and Wabash Railway Company is now, and since the enaction of said Section 77 of the National Bankruptcy Act has been, able to obtain a plain, adequate and complete remedy at law by availing itself of the provisions of said Section 77, and the holders of its bonds are also able to obtain a plain, adequate and complete remedy at law by availing themselves of the provisions of said Section 77 of the National Bankruptcy Act.

[fol. 92] Thus far no proceedings have been had herein to ascertain any facts pertaining to irregularities, fraud, misconduct or mismanagement of Wabash Railway Company, as a consequence of which it may have a cause of action arising therefrom against any person or corporation and it is obvious for the reasons hereinabove set out that the receivers are not the proper parties to institute or maintain proceedings to ascertain any such facts and to take any action relative thereto. Furthermore, the situation with reference to Wabash Railway Company and the receivership as herein mentioned clearly show that for the protection of Wabash Railway Company, the Petitioner and all other parties in interest, it is necessary that any reorganization of Wabash Railway Company, be by and through a proceeding under said Section 77, so that the relief, remedies, guards and protection therein provided for a Railway Company, its creditors, and all parties in interest, and the public generally may be available. The right of Petitioner to have his said judgment paid to him immediately as provided by said Section 77 is a right guaranteed unto him by a law of the land, and in equity and law, is not to be impaired on account of the nature of the proceeding in which a reorganization of Railway Company is sought. Furthermore, under the rule and principle that equity follows the law, the Petitioner is entitled to have said judgment paid unto him immediately and as provided by said Section 77. The continued restraint by this Honorable Court of the Petitioner's right to immediately collect and be paid the full amount due him on account of his said judgment, whether such restraint be by virtue of

said restraining order or by the receivership, is contrary to the spirit and intent of the provision made in Section 77, as aforesaid, for the protection and immediate payment of claims for personal injuries to employees of a railroad corporation. Moreover, it is a well accepted rule and principle of law and equity that whenever the reason or necessity for a receivership ceases to exist, the property [fol. 93] should be discharged therefrom and the receivership should be terminated. The enactment of said Section 77 of the National Bankruptcy Act has removed whatever reason or necessity, there may have been, for a receivership of Wabash Railway Company.

As hereinabove set forth, Petitioner claims and has a lien upon all of the real property of Railway Company, lying, located, being and situate in the City of St. Louis, Missouri, as well as other rights and liens as hereinabove set forth and this Court is exercising jurisdiction, as herein mentioned, over all of the property of Railway Company upon which Petitioner has and claims a lien and in which he has rights as hereinabove set forth, and Petitioner is advised and believes that his interests in such property can be established, preserved and enforced in no other way than by the determination and action of this Honorable Court as herein prayed for.

XXVI.

Said Wabash Railway Company is a corporation, organized and existing under the laws of the State of Indiana, and its lines of railways are located in the States of Missouri, Iowa, Illinois, Indiana, Michigan and Ohio. The number of miles of railways owned by it in the said States is as follows:

Name of State.	Number of Miles.
Missouri	652.35
Iowa	208.96
Illinois	742.81
Indiana	357.46
Michigan	105.60
Ohio	170.22

Petitioner files this petition and brings and prosecutes this proceeding for, and on behalf of himself and all others

similarly situated and all creditors of Wabash Railway Company whose claims are for personal injuries to employees of said Company, and for the protection of the estate of Wabash Railway Company.

[fol. 94] Wherefore, And Forasmuch As, Petitioner is without other or adequate remedy at law or in any other proceeding, this Petitioner respectfully prays:

(1) That the said Norman B. Pitcairn and Frank C. Nicodemus, Jr., and each and both of them, be discharged as receivers of Wabash Railway Company.

(2) That the receivership of Wabash Railway Company as ordered in the above entitled Consolidated Cause and Constituent Causes be, by the order of this Honorable Court, terminated, and that the property of Wabash Railway Company be discharged from said receivership.

(3) That the Restraining Order made and entered by this Honorable Court on December 1, 1931, as aforesaid, and ordering that all persons be restrained and enjoined from interfering with, attaching, levying upon, or in any manner whatsoever, disturbing any portion of the property and premises of Wabash Railway Company, for which said receivers were appointed, be dissolved.

(4) That the Court, if it shall deem the same proper and best, afford unto Railway Company and its security holders the opportunity for a reasonable time not to exceed thirty (30) days, within which to institute proceedings under Section 77 of the National Bankruptcy Act for the reorganization of Wabash Railway Company, before making an order terminating the receivership and discharging the property of Wabash Railway Company therefrom, effective.

HYMAN G. STEIN,
MARK D. EAGLETON,
(by H. G. S.)
Attorneys for Petitioner.

[fol. 95] State of Missouri,
City of St. Louis—ss.

Mark D. Eagleton, being duly sworn on his oath states that he is agent and attorney for the above named Petitioner, Peter J. Carpenter, and that he has read the fore-

going petition, and that the same is true according to the best of his knowledge, information and belief, except as to the matters therein stated to be alleged upon information and belief, and as to these matters he believes them to be true.

MARK D. EAGLETON.

Subscribed and sworn to before me this 24 day of January, 1938.

F. R. BARRETT,
Notary Public.

(Seal)

My commission expires Sept. 5, 1939.

[fol. 96] (Order of Submission of Petition for Order Terminating Receivership of Wabash Railway Company, etc.)

Before Judge Davis—Court No. 1.

April 4, 1938.

Now by consent of parties, the application of Peter J. Carpenter for leave to file petition for order terminating receivership of Wabash Railway Company and dissolving temporary restraining order and injunction submitted to the Court, and the petitioner is granted ten days within which to file supporting brief and defendant ten days thereafter within which to file reply brief.

[fol. 97] (Record Entry of Filing of Notice of Appeal and of Mailing of Copies to Counsel for Appellees.)

Sept. 30, 1938.

Notice of appeal to U. S. C. C. A. of Peter J. Carpenter from order entered August 31, 1938, denying his petition for order terminating receivership of Wabash Ry. Co., and dissolving temporary restraining order and injunction, filed. Copies of such notice mailed to Messrs. Williams, Nelson & English, Attorneys for T. J. Moss Tie Company, Mr. Homer Hall, Attorney for Wabash Ry. Co.; Mr. Nat S. Brown, Counsel for receivers, Frank C. Nicodemus, et al.; Messrs. Nagel, Kirby, Orrick & Shepley, Attorneys for

Chase National Bank, as Trustee, etc., Messrs. Fordyce, White, Mayne, Williams & Hartman, Attorneys for Central Hanover Bank & Trust Co., as Trustee.

[fol. 98] (Findings of Fact and Conclusions of Law of District Court.)

(Filed August 31, 1938.)

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

The Chase National Bank of the City of New York, as Trustee, Plaintiff,

No. 12099. vs. In Equity.

Wabash Railway Company, et al., Defendants.

Consolidated Cause.

In the Matter of the Petition of Peter J. Carpenter for leave to file an intervening petition.

This cause coming on to be heard on the petition of Peter J. Carpenter for leave to file an intervening petition herein, a copy of which is annexed to said petition for leave, and the Court having heard the arguments of counsel, and being fully advised, now makes the following findings of fact and conclusions of law:

Findings of Fact.

1. On February 15, 1929, the petitioner, Peter J. Carpenter, while in the employ of the defendant Wabash Railway Company sustained personal injuries. Thereafter petitioner filed a suit against the defendant Railway Company in the Circuit Court of the City of St. Louis for the recovery of damages alleged to have been sustained as a result of said injuries, and recovered a judgment in said court against the Railway Company in the amount of $15,000 and costs. Thereafter the Railway Company appealed from said judgment to the Supreme Court of the State of Missouri, where the judgment was affirmed upon condition that Carpenter enter a remittitur in the sum of $5,000; and, thereafter, pursuant to the mandate of the Supreme Court of Missouri issued in said cause the Circuit Court of the City of St. Louis, on July 6, 1934, entered an

order that the verdict and judgment theretofore rendered in said cause in favor of said Carpenter and against said Railway Company for the sum of $15,000 be set aside and vacated and for naught held, and that a new judgment be rendered in favor of said Carpenter and against said Railway Company, as of February 13, 1931, in the sum of $10,000; and said Circuit Court on said 6th day of July, 1934, adjudged that said Carpenter have and recover from said Railway Company the sum of $10,000 with interest thereon at the rate of 6% per annum from February 13, 1931, until paid, together with costs of the suit wherein said judgment was rendered.

[fol. 99] 2. On December 1, 1931, the T. J. Moss Tie Company, a Missouri corporation, filed its bill of complaint in this court against Wabash Railway Company, an Indiana corporation, in which it alleged that the plaintiff was a general unsecured creditor of said Railway Company; that said Railway Company was insolvent, that its railway lines and other properties were heavily mortgaged, that said Railway Company was unable to pay its debts, and prayed the appointment of receivers of all the railway lines and properties of said Railway Company. The Railway Company filed its answer to said bill of complaint in which it admitted the allegations of said bill and consented to the appointment of receivers. Thereupon, on said December 1, 1931, an order was entered in said cause in Equity No. 9704, appointing receivers of all the lines of railway and other properties of the defendant Railway Company. The order appointing receivers, among other things, contained the usual and customary injunctive provisions contained in such orders, as follows:

"8. That Wabash Railway Company and the officers, directors, agents, attorneys and employees of said Railway Company, and all other persons claiming to act by virtue of or under said Railway Company, and all other persons, firms and corporations whatsoever and wheresoever situated, located or domiciled, be and they are hereby restrained and enjoined from interfering with, attaching, levying upon or in any manner whatsoever disturbing any portion of the property and premises of which receivers are hereby appointed, or from taking possession of, or in

any way interfering with, the same or any part thereof, or from interfering in any manner to prevent the discharge by said receivers of their duties or the operation of said property and premises under the orders of this Court."

3. On March 1, 1937, The Chase National Bank of the City of New York, as Trustee under the Refunding and General Mortgage of Wabash Railway Company dated January 1, 1925, filed its bill of complaint in this court, by leave, for the foreclosure of the lien of said mortgage, and prayed the appointment of receivers, and the impounding of the income from the mortgaged property. The bill alleged that $60,867,000., principal amount of bonds have been issued under said mortgage. To said bill of complaint the defendant Railway Company filed its answer admitting, in general, the allegations of the bill and consented to the appointment of receivers. Thereupon an order was entered appointing as receivers the same persons who had theretofore been appointed in the T. J. Moss Tie Company case, and consolidating the two causes under the caption of The Chase National Bank of the City of New York, Trustee of the Refunding and General Mortgage of Wabash Railway Company, dated January 1, 1925, vs. Wabash Railway Company, et al., Consolidated Cause in Equity No. 12099.

[fol. 100] 4. On November 1, 1937, the Central Hanover Bank and Trust Company of New York, N. Y., as Trustee under the First Mortgage of the Wabash Railroad Company, dated May 1, 1889, filed its bill of complaint in this court, by leave, against the Wabash Railway Company, et al., alleging that bonds in the principal amount of $33,891,000. have been issued under said Mortgage, that the Railway Company has defaulted in the payment of interest on said bonds, and prayed for the appointment of receivers of the properties covered by said instrument, and the impounding of the rents, issues and profits from the mortgaged properties, and for other relief. The Railway Company filed its answer to said bill of complaint generally admitting the allegations thereof and consented to the appointment of receivers. Thereafter an order was entered appointing as receivers the same persons who had

theretofore been appointed under the causes described in the next two preceding paragraphs, and a further order was entered on November 4, 1937, impounding for the benefit of said mortgage the rents, issues and profits derived from the properties covered thereby.

5. On May 4, 1938, the Central Hanover Bank and Trust Company of New York, as Trustee under the said First Mortgage of The Wabash Railroad Company, filed its amended and supplemental bill of complaint in this court, by leave, wherein the said Trustee, among other relief prayed for, prayed for the foreclosure of the lien of said mortgage; and upon said amended and supplemental bill this Court on said May 4, 1938, entered an order in this cause that the orders entered in said cause upon said original bill of complaint on November 1, 1937, and November 4, 1937, be deemed to have been entered upon said amended and supplemental bill of complaint.

6. Under orders entered in the causes above described all of the railway lines and other properties of the defendant Wabash Railway Company have been in the custody and control of the receivers appointed by this Court, and by orders of other district courts exercising ancillary jurisdiction, since December 1, 1931, and said orders of appointment are still in force and effect.

7. On January 26, 1938, the petitioner, Peter J. Carpenter, filed herein his petition for leave to file an intervening petition in this consolidated cause alleging, among other things, that he is a judgment creditor of the defendant Railway Company for the sum of $10,000., with interest and costs; that said judgment remains unpaid and prays leave to file his intervening petition for an order dismissing and terminating the several receivership proceedings above described, and for dissolution, as to him, [fol. 101] of the above mentioned injunctive orders contained in the several orders of this Court appointing the receivers in the constituent causes of said consolidated cause.

8. The record in this consolidated cause shows that prior to July 1, 1932, the petitioner, Peter J. Carpenter,

filed with the Special Master appointed by this Court to hear and report upon claims filed against the defendant Railway Company, his claim upon the aforesaid judgment in the amount of $10,000, together with interest and costs, for allowance and proper classification of said claim; that on March 7, 1936, the said Special Master filed his report upon said claim of petitioner in which he reported to the Court that said claim, in the amount of $10,587.15, is correct and valid and should be allowed for said sum as a general unsecured claim, and that judgment should be entered thereon in this cause in favor of said claimant, and against the defendant Railway Company, and that said claim is not entitled to any lien or to any priority over other unsecured claims. No exception was taken or filed to the said report of the Special Master by said petitioner or by the defendant Railway Company, the receivers, or any other person, and the time has long since past for filing exceptions to said report.

9. The order of the Court entered in this cause appointing the Special Master and directing him to hear and report upon the claims filed in this proceeding against the defendant Railway Company provided that as to any contested claim the Special Master should, before finally settling his report thereon, furnish to the claimant and to the defendant Railway Company, its receivers, and other interested parties a copy of his proposed report and that any of said parties desiring to except to all or any part of the Master's proposed report should file with the Special Master their exceptions to the proposed report, and the Special Master would thereupon notify the parties of the date upon which he would hear said exceptions and to settle his report. No provision was made in said order appointing the Special Master for the filing of exceptions to claims the validity of which were uncontested by the defendant, its receivers, or any other party in interest. In the claim filed by said Peter J. Carpenter with the Special Master, the Master in his report upon said claim, among other things, stated:

"A certified copy of the judgment of said Circuit Court rendered July 6, 1934 was filed with this Special Master. Counsel appearing on behalf of Wabash Railway Company and on behalf of the Receivers of said last mentioned

Company did before this Special Master agree that the claim of said Claimant be allowed as set out in said judgment of July 6, 1934."

[fol. 102] Conclusions of Law.

The petition of Peter J. Carpenter for leave to file his petition for an order terminating the receivership proceedings above mentioned, and for a dissolution as to him, of the above mentioned injunctive orders contained in the several orders appointing the receivers in the constituent causes of said consolidated cause should be denied for the following reasons:

(a) The petition which said petitioner seeks leave to file does not conform to the requirements of Equity Rule No. 37;

(b) The status and classification of petitioner's claim as an unsecured claim which is not entitled to any lien or priority of payment over any other unsecured claim has heretofore been correctly and finally determined in this cause, and said petitioner is now estopped from asserting a claim for preference and priority of payment over the many other unsecured creditors whose claims have been filed and allowed in these proceedings;

(c) The intervening petition which petitioner seeks leave to file states no cause of action in equity, and the granting of leave to file will merely serve to encumber and delay the orderly process of these cases toward a reorganization of the properties of the defendant Railway Company;

(d) The dismissal, as to said petitioner, of the injunctive provisions of the several orders of this Court appointing the receivers in the several constituent causes of this consolidated cause, without a dismissal of the said several causes, would be of no aid or benefit to said petitioner, since all of the properties of the defendant Railway Company would remain in the exclusive custody and control of the Court's receivers.

CHARLES B. DAVIS,
District Judge.

Dated: August 31, 1938.

[fol. 103] Decree.

(Filed Aug. 31, 1938.)

In the District Court of the United States For the Eastern Division of the Eastern District of Missouri.

The Chase National Bank of the City of New York, as Trustee, Plaintiff,

No. 12099. vs. In Equity.

Wabash Railway Company, et al., Defendants.

Consolidated Cause.

In the Matter of

The Petition of Peter J. Carpenter for leave to file an Intervening Petition.

This cause came on to be heard at this term and, thereupon, upon consideration thereof it was Ordered, Adjudged, and Decreed:

That the petition of Peter J. Carpenter for leave to file his intervening petition in this cause, in form annexed to said petition for leave, be and the same hereby is denied.

The Court's findings of fact and conclusions of law are filed herewith.

CHARLES B. DAVIS,
District Judge.

Dated: August 31, 1938.

[fol. 104] (Order Granting Peter J. Carpenter Leave to Deposit money with Clerk of District Court in lieu of Bond on Appeal.)

(Filed September 30, 1938.)

In the District Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri.

Chase National Bank of the City of New York, as Trustee, Plaintiff,

No. 12,099. vs. In Equity.

Wabash Railway Company, et al., Defendants.

Consolidated Cause.

Peter J. Carpenter now tendering for deposit with the Clerk of this Court the sum of Two Hundred Fifty Dollars ($250.00) as a Cash Bond on the Appeal now, on this 30th day of September, 1938, taken by said Peter J. Car-

penter to the United States Circuit Court of Appeals for the Eighth Circuit, as stated in his Notice of Appeal now, on this day, filed by him in the above entitled cause, from the orders, judgment and decree made and entered in the above entitled Consolidated Cause on August 31st, 1938, upon, and in connection with, his Application for leave to file in the above entitled Consolidated Cause, his Petition, presented with, and attached to, said Application, and upon, and in connection with, his claim and judgment in said Application and Petition mentioned and described;

Now, Therefore, it is, by the Court, Ordered:

(1) That said Peter J. Carpenter be, and he is hereby, granted leave to deposit the said sum of Two Hundred Fifty Dollars ($250.00) with the Clerk of this Court, as a Cash Bond on his said Appeal, and that his said Cash Bond on Appeal be, and the same is hereby, approved;

[fol. 105] (2) That the condition of the said Bond is that if said Appellant shall prosecute his said Appeal with effect and without delay and answer to all damages and costs, if said orders, judgment and decree be affirmed, and to such costs as the Appellate Court may award if the judgment is modified, then the said obligation to be void; otherwise to remain in full force and effect.

Done this 30th day of September, 1938.

CHARLES B. DAVIS,
United States District Court Judge.

[fol. 106]. Statement of Peter J. Carpenter (Appellant) of the Points On Which He Intends to Rely On His Appeal.

(Filed Oct. 1, 1938.)

In the District Court of the United States For the Eastern Division of the Eastern Judicial District of Missouri.

The Chase National Bank of the City of New York, as Trustee, Plaintiff,

No. 12,099. vs. In Equity.

Wabash Railway Company, et al., Defendants.

Consolidated Cause.

Comes now Peter J. Carpenter, (hereinafter referred to as Appellant), and states that the following are the points

on which he intends to rely on his appeal to the United States Circuit Court of Appeals for the Eighth Circuit, from the orders, rulings, judgment and decree made and entered in the above entitled Consolidated Cause, by the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, on August 31st, 1938, upon and in connection with his Application For Leave to File in the above entitled Consolidated Cause his Petition, presented with, and attached to said Application, and upon and in connection with his claim and judgment against Wabash Railway Company, mentioned and described in his said Application and Petition:—

The said District Court erred in denying Appellant's Application for leave to file his Petition for an order terminating the Receivership of Wabash Railway Company, [fol. 107] discharging the Receivers and dissolving the Temporary Injunction granted December 1, 1931, whereby Appellant has since that date been restrained and enjoined from levying execution on, and collecting, his judgment recovered February 13, 1931 against Wabash Railway Company. Appellant having been so enjoined and restrained had and has the absolute right to file and be heard upon a petition to dissolve said injunction. By said injunction the Court in effect made Appellant a party in the proceeding and Appellant was in effect given the status of a defendant who is summoned by process of Court. Any application made at any time to dissolve an existing injunctive order should be heard and if the facts warrant, it should be dissolved. Any creditor is entitled at any time to move the discharge of a receiver and the termination of the receivership and to present the question upon the situation existing at the time the motion is filed. The Court was and is without authority or right, and it is contrary to law and equity to unnecessarily, and for an undue time, prolong the Receivership, and after more than six years to continue by such receivership and injunction to keep at bay Appellant and other creditors of Wabash Railway Company similarly situated. In continuing the receivership and injunction for more than six years the Court has abused its powers and discretion and particularly so in view of the facts and circumstances appearing in the record and recited in the Petition Appellant sought leave to

file. Any creditor is entitled to be heard upon a Petition to remove receivers because of their unfitness and Appellant's Petition clearly reveals that the present receivers of Wabash Railway Company are eminently unfit and [fol. 108] should be removed.

Where, as in this case, an equity receivership proceeding is not being prosecuted in good faith, and is being used to hinder or delay creditors, it should be dismissed.

Irrespective of the right of the Court to make the original appointment of receivers of Wabash Railway Company, the subsequent enactment of the provisions in the National Bankruptcy Act for the reorganization of railroads engaged in Interstate Commerce provided a plain, adequate and complete statutory remedy for those who procured the appointment of receivers and for the reorganization of the Company, and therefore the present Equity Proceeding should be sustained no longer and a continuation of such Equity Proceeding and Receivership is contrary to Section 384, Title 28, U. S. C. A.

The Court having undoubtedly been unaware at the time the receivers were appointed, of the frauds practiced upon Wabash Railway Company as subsequently made public by a Committee of the United States Senate and as outlined in Appellant's Petition, should not, upon being informed thereof, have failed, hesitated or refused to terminate the Receivership and thereby compel the institution of a Reorganization Proceeding under the highly remedial provisions of the Bankruptcy Act relating to the reorganization of railroads.

In view of the facts and circumstances as recited in Appellant's Petition and the frauds perpetrated upon Wabash Railway Company, by interests now controlling its voting stock and which interests are dominant factors in formulating a proposed reorganization, and in view of the receivers' close connection with, and subordination to, such interests, the long pendency of the Receivership Proceedings and the submission of a proposed plan of reorganization affords no [fol. 109] justification for the further continuation of a proceeding under which the rights of Wabash Railway Company and its Creditors have not received, and are not re-

ceiving the protection intended and provided by such provisions of the National Bankruptcy Act and there can be no orderly or fair reorganization of Wabash Railway Company while the frauds alleged in Appellant's Petition are permitted to go without redress, and there can be no orderly or fair reorganization in a friendly receivership proceeding in which, as in the present receivership proceeding of Wabash Railway Company, there are present the abuses recited in Appellant's Petition and which abuses are of the character which the United States Appellate Courts have time and again criticized and which Congress, by provisions in the Bankruptcy Act relating to the reorganization of railroad companies, has sought to remedy or remove.

The continuation in office of one receiver of Wabash Railway Company, who has long been an officer thereof and of the other receiver who has himself long been an officer and major representative of Pennsylvania Railroad Company, holder of the voting control of Wabash Railway Company's stock, and which in Appellant's Verified Petition is alleged to have perpetrated upon Wabash Railway Company serious frauds and damage aggregating millions of dollars, operates to defeat the spirit and intention, and effect of the highly remedial proceedings and requirements provided by Congress in its Amendment of the Bankruptcy Act as a guard against the abuses in friendly equity receiverships of railroads.

The parties who petitioned for, and seek to continue the Receivership cannot have, under any circumstances, an absolute right to a continuation of such receivership, and even [fol. 110] when the continuation of a receivership is proper, the same rests within the discretion of the Court; a Court of Equity should not exercise any discretion it might have, to continue a receivership under the circumstances set forth in the Appellant's Petition, and when the continuation thereof operates to defeat the spirit and intention of remedial legislation enacted by Congress during the pendency of the Receivership and which receivership has deprived and continues to deprive Wabash Railway Company and its Creditors of the benefits and protection of such new legislation.

Independent of all questions relative to the classification or priority of Appellant's claim and judgment, the Court's own position as an institution of justice forbids that by a continuation of the Receivership of Wabash Railway Company and the continuation in office of the present receivers, that there should continue to be made unavailing the adequate and highly remedial proceedings provided in the Bankruptcy Act relating to the Reorganization of Railroads and through which proceedings there could be facilitated the protection of the rights of Wabash Railway Company and its creditors and the recovery on behalf of Wabash Railway Company and its creditors of millions of dollars lost to such Company through frauds and misconduct recited in Appellant's Petition, and which were practiced upon said Company by those formerly in control of the Company and who still control its voting stock and have close connections with the receivers and are dominant factors in current proceedings for the reorganization of Wabash Railway Company under the Plan as recited in Appellant's Petition, and under which Plan such frauds and losses would go unredressed and be forgiven.

By its orders, findings, conclusions and judgment the Court, upon a hearing of Appellant's said Application, [fol. 141] in effect and erroneously, refused an Order to wind up the pending Receivership of Wabash Railway Company, or to take the appropriate steps to accomplish the purposes thereof, and, in effect and erroneously, continued said Temporary Injunction granted December 1, 1931, and, in effect and erroneously, refused Appellant's Application to dissolve said Injunction.

The Court erroneously treated and considered Appellant's said Application and Petition as an Application for leave to file an Intervening Petition. Appellant's Application was for leave to file a petition for relief against the present proceeding and the Orders made therein, rather than for relief within such proceeding. The Court erred in holding that the Petition which Appellant sought leave to file does not conform to the requirements of former Equity Rule No. 37; furthermore, former Equity Rule No. 37 in no way applies, or is material to Appellant's said Application or Petition and is no longer in effect.

Even though such Application and Petition should be construed as an Application for leave to file an Intervening Petition, nevertheless such Petition on its face shows that it was within that class which Appellant had an absolute right to file and which the Court had no right or jurisdiction to deny, because of the allegations therein contained and because Appellant has an interest in and a lien upon specific property in the exclusive jurisdiction and subject to the exclusive disposition of said District Court, and his interest therein and lien thereon can be established, preserved or enforced in no other way than by the determination and action of that Court.

[fol. 112] In ruling upon Appellant's said Application, the Court was without right or authority to make any finding or ruling upon the status or classification of Appellant's claim and judgment against Wabash Railway Company, and the Court erred in doing so, and the court erred in making any ruling or finding or entering any judgment upon Appellant's said claim or judgment or the status or classification thereof, while and although refusing to accord Appellant any right of trial thereon.

The Court erred in finding, ruling and adjudging that Appellant's said claim and judgment was an unsecured claim and not entitled to any lien or priority of payment, and that said claim and judgment had, prior to such order, ruling and judgment, been correctly and finally determined to be an unsecured claim and not entitled to any lien or priority of payment, and that Appellant is now estopped from asserting a claim for preference and priority of payment.

The Special Master reporting upon Appellant's claim and judgment was appointed and authorized only to hear and report upon, and not to decide, claims referred to him by the Court and his report was merely a recommendation to the Court and it was the Court's exclusive province and duty to determine and adjudge such claims and the classification and priority thereof.

The Appellant did not consent to the appointment of the Special Master, or the reference of his claim, and is therefore not bound or concluded by the Special Master's find-

ings or report thereon. Although required by the Order of Court to do so, the Special Master failed to give any notice to Appellant relative to the time and place at which he [fol. 113] would settle his report or relative to the time within which Appellant might file Exceptions thereto, or relative to the time the Report would be filed, and accordingly Appellant is not bound by such Report and the time within which he should file Exceptions has not been fixed.

The Court erred in finding and ruling that the time has long since passed for filing Exceptions to such report.

The Court erred in ignoring the fact that such report of the Special Master was never confirmed by the Court.

Upon the face of the Special Master's Report on Appellant's claim and judgment, there is manifest error in the Special Master's Findings of Fact and Conclusions of Law, and the Court should have noticed such errors, and erred in failing and refusing to do so. Notwithstanding the absence of Exceptions to a Special Master's Report a court has authority to, and should, disregard erroneous Conclusions of Law and erroneous Findings of Fact appearing in and upon the face of such report.

A Special Master's Report is never final as to his erroneous Conclusions of Law, notwithstanding the absence of any Exceptions thereto, and is never final as to erroneous Findings of Fact apparent upon the face of such report, notwithstanding the absence of any Exceptions thereto.

Equity follows the law, and therefore even in an Equity Receivership Proceeding, and independent of every other consideration, Appellant's claim and judgment, being for personal injuries sustained by him as an employee of Wabash Railway Company, a railroad engaged in Interstate Commerce, should be accorded priority and paid as an operating expense as provided by the provisions of the Bankruptcy Act relating to the reorganization of railroads engaged in Interstate Commerce.

[fol. 114] Under the provisions of Section 1104 and 1105, R. S. Missouri, 1929, Appellant's judgment recovered on February 13, 1931 in the Circuit Court of the City of St. Louis, Missouri, became upon such date and ever since has

been, a lien upon the real estate of Wabash Railway Company, situate in the City of St. Louis, Missouri, and the Court in subsequently taking possession of such property by the appointment of receivers on December 1, 1931, took such possession and holds the same subject to Appellant's said lien. The Receivers' possession of property of Wabash Railway Company has been, and is, subject to all other lien rights of Appellant.

Appellant is an Indiana Corporation and the owner of property, and owns and operates railway lines in Indiana, Missouri and Ohio.

Under the law of the State of Missouri, and under the law of the State of Indiana, Appellant's claim and judgment was, and is, a prior and secured claim and entitled to payment as operating expenses.

Under the law of Ohio, and particularly Sections 9079 to 9090, both inclusive, of Throckmorton's Annotated Code of Ohio, Baldwin's Revision, 1934, and the Law of Ohio, as stated in the case of "King, et al. vs. Thompson, et al., 110 Fed. Reports, 319", Appellant's claim and judgment is a prior claim and a lien upon and prior to any mortgage lien on the property and railway lines of Wabash Railway Company in Ohio.

Under the orders and classification made by the Interstate Commerce Commission by an Order effective July 1, 1914, prescribing a classification of operating revenues and operating expenses for the use of carriers by rail, Appellant's said judgment and claim is and should be considered, treated and paid as an operating expense.

The Court should not, by means of an Equity Proceeding, [fol. 115] or through a continuation of the same, cause or permit Appellant to be deprived of the right to have his claim and judgment paid as a prior claim and as an operating expense, as intended by Congress and provided in the applicable sections of the Bankruptcy Act relating to the reorganization of railroads.

Independent of every other consideration, Appellant's claim and judgment being for and on account of injuries

sustained by him while in the course of performing his duties as an employee of Wabash Railway Company, was and is a prior claim and arose and grew out of the operation of said railroad and is entitled to and should be paid as an operating expense.

The said orders, rulings and judgment of said District Court here appealed from, in violation of and contrary to the Fifth Amendment to the Constitution of the United States, deprive Appellant of his property without due process of law, and contrary to and in violation of Article Fourth of the Constitution of the United States, fail to give full faith and credit to the aforesaid judgment recovered by Appellant in the Circuit Court of the City of St. Louis, Missouri.

The Court erred in concluding, ruling and adjudging that the Petition which Appellant sought leave to file states no cause of action in equity, and that the granting of leave to file the same would merely serve to encumber and delay the orderly process of the above mentioned Constituent Causes toward a reorganization of the properties of Wabash Railway Company.

The said orders, rulings and judgment of said District Court made and entered on August 31, 1938, and each and all of the same, are erroneous and against the law and against equity.

MARK D. EAGLETON and
HYMAN G. STEIN,
By Hyman G. Stein,
Attorneys for Peter J. Carpenter, Appellant.

[fol. 116] Acknowledgment of Service.

The undersigned hereby acknowledge the receipt and service upon them, this 30th day of September, 1938, of a

(Appellant) of The Points On Which He Intends To Rely On His Appeal".

T. J. MOSS TIE COMPANY,
By Fred L. Williams & Earl F. Nelson,
Its Attorneys.

WABASH RAILWAY COMPANY,
By Homer Hall, Its Attorney. NSB.

FRANK C. NICODEMUS, JR., and NORMAN B. PITCAIRN, Receivers of Wabash Railway Company,
By Nat S. Brown, Their Attorney.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee, etc.,
By Nagel, Kirby, Orick & Shepley,
Its Attorneys.

THE CENTRAL HANOVER BANK & TRUST COMPANY, Trustee, etc.,
By Larkin, Rathbone & Perry,
Fordyce, White, Mayne, Williams & Hartman,
Its Attorneys.

[fol. 117] Designation of Contents of Record On Appeal of Peter J. Carpenter.

(Filed Oct. 1, 1938.)

Now comes Peter J. Carpenter and hereby designates the following portions of the record to be contained in the [fol. 118] record on the appeal taken by him on September 30, 1938, in the above entitled Consolidated Cause, to the United States Circuit Court of Appeals for the Eighth Circuit.

I.

The Bill of Complaint filed December 1, 1931, by T. J. Moss Tie Company, as Complainant, against Wabash Railway Company, as Defendant, in Cause entitled "T. J. Moss Tie Company, Complainant, vs. Wabash Railway Company, Defendant, in Equity No. 9704";

II.

Answer filed by Wabash Railway Company to said Bill of Complaint on December 1, 1931;

III.

Order of December 1, 1931 entered in said Cause In Equity No. 9704, appointing Walter S. Franklin and Frank C. Nicodemus, Jr. Receivers of Wabash Railway Company, granting Injunction, etc., and which Order is entitled "Order Appointing Receivers";

IV.

Minute entry showing the filing by said Receivers of their Bond and the Court's approval of same;

V.

Order of December 3, 1931 appointing Nat S. Brown general counsel of the Receivers;

VI.

Order of March 19, 1932 appointing Forrest C. Donnell Special Master;

VII.

Order of April 7, 1932 entitled "Order In Regard To The Filing of Claims";

[fol. 119]

VIII.

So much of Receiver's Inventory filed on February 26, 1932, as sets forth location of lines of railroad of Wabash Railway Company, general description of other property, and statement of securities owned and pledged;

IX.

Resignation of Walter S. Franklin as Receiver, filed October 19, 1933, and Order of that date accepting such resignation;

X.

Order filed October 19, 1933, appointing Norman B. Pitcairn as a Receiver;

XI.

So much of the Partial Report of Forrest C. Donnell, Special Master, filed March 7, 1936, as relates to the claim of Peter J. Carpenter, and being the introductory portion paragraph One, Item 3 of Paragraph Two, Paragraph Three (excepting names of claimants and matters dealing with claims other than that of Peter J. Carpenter) paragraph Four;

XII.

Minute Entry of March 1, 1937, showing the filing by leave on that date of Bill of Complaint of the Chase National Bank of the City of New York, as Trustee, etc., as Plaintiff, against Wabash Railway Company, as Defendants, and style of, and number assigned to, such Cause;

XIII.

Order of March 1, 1937, consolidating Causes 9704 and 12099 as Consolidated Cause In Equity No. 12099 and appointing Norman B. Pitcairn and Frank C. Nicodemus, Jr. as Receivers in said Consolidated Cause, etc.;

[fol. 120]

XIV.

Minute Entry of November 1, 1937, showing the granting of leave to, and the filing of Bill Of Complaint by Central Hanover Bank & Trust Company, Trustee, etc., and minute entry showing style of, and number assigned to, such Cause;

XV.

Order of November 1, 1937, consolidating Causes No. 9704, 12099 and 12357, as Consolidated Cause In Equity No. 12099, appointing Norman B. Pitcairn and Frank C. Nicodemus, Jr. as Receivers in said Consolidated Cause, etc.;

XVI.

Supplemental Order of November 4, 1937 on Bill Of Complaint of Central Hanover Bank & Trust Company, as Trustee, etc.;

XVII.

Notice and Application of Peter J. Carpenter, filed Jan-

minating Receivership of Wabash Railway Company and dissolving Temporary Restraining Order and Injunction, in the form thereto attached, and also said Petition and the Entry and Order of January 26, 1938, showing the filing by leave of Court of said Notice and Application with said Petition thereto attached;

XVIII.

Entry and Order of April 4, 1938 showing submission on that date of said Application of Peter J. Carpenter for leave to file his said Petition;

XIX.

Order and Decree made and entered in said Consolidated Cause on August 31, 1938, upon and in connection with said Application and Petition of Peter J. Carpenter, and also the Court's Findings Of Fact and Conclusions Of [fol. 121] Law relative thereto, filed in said Consolidated Cause on said August 31, 1938;

XX.

Notice Of Appeal filed by Peter J. Carpenter on September 30, 1938, and proof of mailing of copies of same by the Clerk to the Appellees;

XXI.

Order of September 30, 1938 granting Appellant leave to deposit, and approving, cash bond on appeal and entry showing deposit of said cash bond with the Clerk on said date;

XXII.

Statement of Peter J. Carpenter of the Points on which he intends to rely on his Appeal and Acknowledgment of Service of said statement, filed September 30, 1938;

XXIII.

Minute entries showing filing and entering of the above mentioned portions of the record;

XXIV.

This designation of contents of record on appeal, together with Acknowledgment of Service thereof on Appellees and minute entry showing filing of same.

MARK D. EAGLETON and
HYMAN G. STEIN,
By Hyman G. Stein,
Attorneys for Appellant, Peter J. Carpenter.

[fol. 122] Acknowledgment of Service.

The undersigned hereby acknowledge the receipt and service upon them, this 30th day of September, 1938, of a copy of the foregoing "Designation Of Contents Of Record On Appeal Of Peter J. Carpenter".

T. J. MOSS TIE COMPANY,
By Fred L. Williams & Earl F. Nelson,
Its Attorneys.

WABASH RAILWAY COMPANY,
By Homer Hall, Its Attorney. NSB.

FRANK C. NICODEMUS, JR., and
NORMAN B. PITCAIRN, Receivers
of Wabash Railway Company,
By Nat S. Brown, Their Attorney.

THE CHASE NATIONAL BANK OF
THE CITY OF NEW YORK, as
Trustee, etc.,
By Nagel, Kirby, Orick & Shepley,
Its Attorneys.

THE CENTRAL HANOVER BANK &
TRUST COMPANY, Trustee, etc.,
By Larkin, Rathbone & Perry,
Fordyce, White, Mayne, Williams &
Hartman,
Its Attorneys.

[fol. 123] Clerk's Certificate.

United States of America,
Eastern Division of the Eastern
Judicial District of Missouri—ss.

I, Jas. J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri Do Hereby Certify the above and foregoing to be a full, true and complete transcript (except insofar as the same is restricted by the praecipe for transcript heretofore set out) of the record and proceedings in cause No. 12099, In Equity, wherein The Chase National Bank of the City of New York, as Trustee is complainant and Wabash Railway Company, Norman B. Pitcairn and Frank C. Nicodemus, Jr., as Receivers, etc., et al., are defendants, as fully as the same remains on file and of record in my office.

Seal
U. S. Dist. Court
East. Div. of the
East. Jud. Dist.
of Mo.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at office in the City of St. Louis, in said Division of said District this 4th day of November, in the year of our Lord, Nineteen Hundred and Thirty-eight.

JAS. J. O'CONNOR,
Clerk of said Court.
By C. E. Rudolph,
Deputy.

Filed Nov. 5, 1938. E. E. Koch, Clerk.

[fol. 1] (Order of U. S. District Court directing that certified copies of Claim of Peter J. Carpenter and Proceedings before Special Master be forwarded to Appellate Court, etc.)

In the District Court of the United States, for the Eastern District of Missouri, Eastern Division.

The Chase National Bank of The City of New York, as Trustee, Plaintiff,
No. 12099. vs. In Equity.
Wabash Railway Company, et al., Defendants.

Consolidated Cause.

In the Matter of

The Petition of Peter J. Carpenter for leave to file an intervening petition.

It having been made to appear to the Court that there has been omitted from the transcript of the record of this Court filed in the United States Circuit Court of Appeals, Eighth Circuit, on the appeal of Peter J. Carpenter, the claim originally filed by Peter J. Carpenter against Wabash Railway Company, before the Special Master, Forrest C. Donnell, and the record of the proceedings before the Special Master upon the presentation and hearing of the claim of Peter J. Carpenter, as the same appears in the report of the Special Master filed in this Court, and that the claim filed and the proceedings thereon before the Special Master are material to the Appellees on said appeal from the order and decree of this Court thereon and have been omitted from the record by error or accident, it is therefore

Ordered,

That the Clerk of this Court prepare, certify and transmit to the United States Circuit Court of Appeals for the Eighth Circuit, a supplemental record consisting of (1) the original claim of Peter J. Carpenter against Wabash Railway Company filed with the Special Master, and (2) the proceedings before the Special Master upon the presentation and hearing of the said claim of Peter J. Carpenter, as said claim and said proceedings before the Special Master appear in the report of the Special Master upon the said claim of Peter J. Carpenter filed in this Court in T. J. Moss Tie Company, Complainant, vs. Wabash Railway Company, Defendant, No. 9704, on the 7th day of March, 1936.

[fol. 2] It Is Further Ordered,

That the date March 7, 1937, appearing in Paragraph 8 of the Court's Findings of Facts as the date on which the report of the Special Master on the claim of Peter J.

Carpenter was filed, be changed to March 7, 1936, which is the date said report was filed.

CHARLES B. DAVIS,
Judge.

Dated December 2, 1938.

Endorsed: Filed Dec. 2, 1938, Jas. J. O'Connor, Clerk.

[fol. 3] United States of America,
Eastern District of Missouri—ss.:

I, Jas. J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original order filed December 2, 1938, directing the [the] Clerk of the District Court to certify and transmit to the United States Circuit Court of Appeals for the Eighth Circuit, a supplemental record in the appeal of Peter J. Carpenter against the Wabash Railway Company, in consolidated cause No. 12099, wherein The Chase National Bank of the City of New York, as Trustee is plaintiff and The Wabash Railway Company, et al. are defendants, now remaining among the records of the said Court in my office.

Seal
U. S. Dist. Court
East. Div. of the
East. Jud. Dist.
of Mo.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 3rd day of December, A. D. 1938.

JAS. J. O'CONNOR,
Clerk.

By C. E. Rudolph,
Deputy Clerk.

(Endorsed): No. 11,354. Certified copy of Order for transmission of Claim of Peter J. Carpenter and Proceedings before Special Master in connection with such Claim, etc. Filed in U. S. Circuit Court of Appeals on December 3, 1938.

[fol. 4] (Proceedings before Special Master upon presentation and hearing of Claim of Peter J. Carpenter.)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

T. J. Moss Tie Company, Complainant,
No. 9704. vs. In Equity.
Wabash Railway Company, Defendant.

Before Forrest C. Donnell, Special Master.

In the Matter of the claim of Peter J. Carpenter: (hereinbelow termed the Claimant):

On this 26th day of August, 1935, at ten o'clock A.M., before the above mentioned Special Master, at his office, Suite 1103 in the Telephone Building, 1010 Pine street, St. Louis, Missouri, the hearing of the above claim was entered upon.

Let the record show the following:

1. That hitherto on or prior to July 1, 1932, the claim of the above mentioned claimant was filed with said Special Master.

2. That hitherto, to-wit, on August 31, 1932, the answer of the Receivers of the defendant in the above entitled cause was filed with said Special Master.

3 That, as to the above mentioned claim, the Special Master did, by notice mailed on the 9th day of August, [fol. 5] 1935, in the United States mail in an envelope upon which was requisite United States postage, give notice of the time and place in the City of St. Louis, Missouri, to-wit, the 26th day of August, 1935, at ten o'clock A. M., at the office of said Special Master, Suite 1103 Telephone Building, 1010 Pine street, St. Louis, Missouri, when the above mentioned Claimant will be given an opportunity to present and make proof, before said Special Master, of the amount of his claim and the lien and priority, if any, thereof, and to present his objections, if any, to the allowance of the claims of any and all other creditors presented to said Special Master.

4. That all the solicitors of record in this cause were, by notice mailed on August 9, 1935, in the United States

mail in an envelope upon which was requisite United States postage, given notice of the time and place of the hearing of the above mentioned claim to be held August 26, 1935, at ten o'clock A. M., before said Special Master, at the office of said Special Master, Suite 1103 Telephone Building, 1010 Pine Street, St. Louis, Missouri.

5. That at the time and place first hereinabove mentioned there was present F. D. Fauser appearing on behalf of the defendant, Wabash Railway Company, and on behalf of the Receivers of said defendant.

There was also present R. P. Elam and Theodore Bruere appearing on behalf of the Claimant.

[fol. 6] There was also present E. J. Barker appearing on behalf of the Reconstruction Finance Corporation.

The Special Master: Let the record also show the personal representation of Mr. Theodore Bruere at this time.

What is the situation in this matter?

Mr. Elam: In support of this claim I wish to offer in evidence this certified copy of the judgment of the Circuit Court of the City of St. Louis.

The Special Master: You are referring, Mr. Elam, to the certified copy, under date August 13, 1935, by the Clerk of the Circuit Court of the City of St. Louis, of the judgment rendered by the last mentioned court on July 6, 1934, at the June Term thereof, in case No. 142443-B, in suit entitled Peter J. Carpenter vs. Wabash Railway Company, a corporation, is that correct?

Mr. Elam: Yes. That judgment, however, is entered in pursuance to a mandate, as you will note.

The Special Master: That is right.

Mr. Elam: The judgment is for $10,000, as of the 13th day of February, 1931, and, of course, costs. I do not have the cost bill.

The Special Master: Anything further to be offered in this matter?

Mr. Elam: Yes; I would like to have leave to submit at a future date the cost bill of the Circuit Court as soon as [fol. 7] it has been prepared.

The Special Master: Any objection to either of these offers, Mr. Fauser?

Mr. Fauser: No. We agree further that the claim be allowed as set out in the judgment.

The Special Master: It is in the sum of $10,000 with interest thereon at the rate of six percent per annum from the 13th day of February, 1931, to the date of the beginning of the receivership, is that correct?

Mr. Fauser: Yes.

The Special Master: That is to December 1, 1931?

Mr. Fauser: Yes.

Mr. Elam: And costs.

The Special Master: I understand from you the cost bill will be submitted?

Mr. Elam: I will submit it.

The Special Master: Is there [anthing] to be said by you, Mr. Barker, in that regard?

Mr. Barker: No, sir, it is perfectly agreeable to us.

The Special Master: Nothing on behalf of the Reconstruction Finance Corporation?

Mr. Barker: No, our only interest is to see they are properly filed and judgment properly entered.

(Thereupon the reporter marks said certified copy of [fol. 8] judgment as "Exhibit A", and said Exhibit is attached to this record.)

The Special Master: On this 6th day of January, 1936, there being present Robert P. Elam, attorney for claimant, the Special Master determined that, pursuant to bill of costs, being attached and marked "Exhibit B", hitherto presented to the Special Master by counsel for claimant in the above matter, the court costs hereinbefore referred to are hereby determined to be the sum of $104.15, where-

fore, the Special Master determines that he shall report to the Court,

(a) That said claim, to the extent of $10,000.00 principal, plus $104.15, court costs, plus interest on said principal amount of $10,000.00, at the rate of 6% per annum from February 13, 1931, to December 1, 1931, is correct and valid, and should be allowed in the aggregate of the said principal sum, court costs and interest, as a general unsecured claim, and that judgment should be entered thereon in the above entitled cause in favor of said claimant Peter J. Carpenter, and against defendant, Wabash Railway Company, in said aggregate amount;

(b) That said claim is not entitled to any lien or to any priority over other general unsecured claims.

FORREST C. DONNELL,
Special Master.

Endorsed: Filed, Mar. 7, 1936. Jas. J. O'Connor, Clerk.

[fol. 9] Exhibit A.

FW Huf

(Judgment.)

State of Missouri,
City of St. Louis—ss.:

In the Circuit Court of the City of St. Louis.

June Term, 1934.

Friday, July 6th, 1934.

Peter J. Carpenter,
142443-B vs.
Wabash Railway Company, a corporation.

Now at this day the Court in obedience to the mandate of the Supreme Court of Missouri heretofore filed herein, on the 2nd day of June 1934, doth order that the verdict and judgment heretofore rendered herein on the 13th day of February 1931, in favor of plaintiff and against the defendant for the sum of $15,000.00, be set aside and vacated and for naught held and that a new judgment be rendered

in favor of plaintiff and against the defendant as of said date, in the sum of $10,000.00.

Wherefore, it is considered and adjudged by the Court that plaintiff have and recover of the defendant the sum of Ten Thousand and 00/100 Dollars ($10,000.00) with interest thereon at the rate of 6% per annum from said 13th day of February, 1931, until paid, together with the costs of this suit and have therefor execution.

[fol. 10] State of Missouri,
City of St. Louis—ss.:

I, H. Sam Priest, Clerk of the Circuit Court, City of St. Louis within and for the City and State aforesaid, certify the above and foregoing to be a full, true and complete transcript of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at office, in the City of St. Louis, this 13th day of August, 1935.

(Seal)

#14

H. SAM PRIEST,
Clerk, Circuit Court.

Endorsed: Filed March 7, 1936, Jas. J. O'Connor, Clerk.

[fol. 11] Statement of Claim of Peter J. Carpenter.

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

T. J. Moss Tie Company, Plaintiff,
No. 9704. vs. In Equity.
Wabash Railway Company, a corporation, Defendant.

Name: Peter J. Carpenter,

Address: 515 Emmons Ave., St. Charles, Missouri.

Amount of Claim: $15,000.00, together with interest thereon at the rate of 6% per annum from the 14th day of February, 1931.

Nature of Claim: This claim is based upon a judgment in the amount of $15,000.00, together with interest thereon at the rate of 6% per annum, from the date of rendition, said judgment having been made and entered on the 14th day of February, 1931, in Division #14 of the Circuit Court of the City of St. Louis, Missouri, in the case of Peter J. Carpenter vs. Wabash Ry. Co., a corporation, being Cause #142,443, of the Circuit Court of the City of St. Louis, Missouri. An appeal from said judgment was taken by the defendant Wabash Ry. Co. on December 4, 1931, and is now pending in the Supreme Court of the State of Missouri.

Attorneys: Mark D. Eagleton and Harry M. Stone,
1020 Telephone Bldg.,
St. Louis, Missouri.

PETER J. CARPENTER.

State of Missouri,
County of —ss.:

Peter J. Carpenter, the above named claimant, being duly sworn upon his oath, deposes and says that he has read the foregoing statement of claim, and that the facts therein stated are true to the best of his knowledge and belief; that he has given credit to the Wabash Railway Company for all payments and offsets to which it is justly entitled, and that the amount now due and owing to him from the Wabash Railway Company is as stated above.

PETER J. CARPENTER.

[fol. 12] Subscribed and sworn to before me this 9 day of June, 1932.

My commission expires July 23rd, 1935.

(Seal) MAX J. FREY,
Notary Public.

Endorsed: Filed, March 7, 1936. Jas. J. O'Connor, Clerk.

[fol. 13] United States of America,
Eastern District of Missouri—ss.:

I, Jas. J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do here-

by certify that the annexed and foregoing is a true and full copy of the original Report of Proceedings before Forrest C. Donnell, Special Master, together with statement of claim of Peter J. Carpenter attached thereto, filed on March 7, 1936, in case #9704, as well as Exhibit A attached to the aforesaid Report.

T. J. Moss Tie Company,
vs.
Wabash Railway Company.

now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri this 28th day of November, A. D. 1938.

Seal
U. S. Dist. Court
East. Div. of the
East. Jud. Dist. of
Missouri.

JAMES J. O'CONNOR,
Clerk.

By Harold G. Pryce,
Deputy Clerk.

(Endorsed): No. 11,354. Certified copy of Claim of Peter J. Carpenter and Proceedings before Special Master on such Claim. Filed in U. S. Circuit Court of Appeals on December 3, 1938.

In the District Court of the United States For the Eastern Judicial District of Missouri, Eastern Division.

T. J. Moss Tie Company, Complainant,
No. 9704. vs. In Equity.
Wabash Railway Company, Defendant.

Before Hon. Forrest C. Donnell, Special Master.

In the Matter of

The Claim of Peter J. Carpenter, Claimant.

Answer.

Come now Walter S. Franklin and Frank C. Nicodemus, Jr., Receivers of Wabash Railway Company, defendant in the above entitled cause, and, for answer to the claim filed by the above named claimant, state that they admit that judgment was rendered against said defendant as alleged.

The Receivers for further answer state that they deny that the claim is entitled to any preference or priority in payment.

Wherefore, having fully answered, the Receivers pray that, if the claim be allowed, it be not classified as entitled to any priority or preference in payment.

WALTER S. FRANKLIN and
FRANK C. NICODEMUS, JR.,
Receivers, Wabash Railway Company,
By N. S. Brown,
Homer Hall,
Attorneys for Receivers.

Filed Aug. 31, 1932.

United States of America,
Eastern District of Missouri.—ss.:

I, Jas. J. O'Connor, Clerk of the United States District Court in and for the Eastern District of Missouri, do hereby certify that the annexed and foregoing is a true and full copy of the original answer as contained in the "Transcript of Record and Proceedings" before Forrest C. Donnell, Special Master, filed herein March 7th, 1936, In Re: claim of Peter J. Carpenter, pursuant to order of Hon.

Charles B. Davis under date of December 2, 1938 and inadvertently omitted from supplemental transcript of record certified under date of November 28, 1938, which said supplemental transcript of record contains the documents subsequently ordered transmitted by said order of December 2, 1938, except the answer as herein certified.

The Chase National Bank of the City of New York, as Trustee, etc.,
No. 12,099. vs. In Equity.
Wabash Railway Company, a corp., et al.

Consolidated Cause.

now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at St. Louis, Missouri, this 17th day of January, A. D. 1939.

Seal
U. S. Dist. Court
East. Div.
East. Jud. Dist.
of Mo.

JAS. J. O'CONNOR,
Clerk.

By C. E. Rudolph,
Deputy Clerk.

(Endorsed): No. 11,354. Certified copy of Answer omitted from certified copy of Proceedings before Special Master heretofore filed pursuant to order of U. S. District Court. Filed in U. S. Circuit Court of Appeals on January 17, 1939.

[fol. 111] And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz.:

(Appearance of Counsel for Appellant.)

United States Circuit Court of Appeals, Eighth Circuit.

Peter J. Carpenter, Appellant,
No. 11,354. vs.
Wabash Railway Company, et al.

The Clerk will enter my appearance as Counsel for the Appellant.

HYMAN G. STEIN,
MARK D. EAGLETON,
c/o H. G. S.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 5, 1938.

(Appearance of Mr. N. S. Brown and Mr. Homer Hall as Counsel for Appellees.)

The Clerk will enter my appearance as Counsel for the Appellees.

N. S. BROWN,
HOMER HALL,

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 9, 1938.

[fol. 112] (Appearance of Mr. Allen C. Orrick and Mr. Arthur B. Shepley, Jr., as Counsel for Appellee Chase National Bank, as Trustee.)

The Clerk will enter my appearance as Counsel for the Appellee, The Chase National Bank of the City of New York, as Trustee.

ALLEN C. ORRICK,
ARTHUR B. SHEPLEY, JR.,
319 North Fourth Street

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 10, 1938.

(Appearance of Mr. Fred L. Williams and Mr. Earl F. Nelson as Counsel for Appellee T. J. Moss Tie Company.

The Clerk will enter my appearance as Counsel for the Appellee T. J. Moss Tie Company.

FRED L. WILLIAMS,
EARL F. NELSON,
1907 Boatmens Bank Bldg.,
St. Louis, Mo.
Attorneys for T. J. Moss Tie Company, Appellee.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 17, 1938.

[fol. 113] (Appearance of Mr. A. M. Lewis, Mr. Hovey C. Clark, Mr. Thomas W. White and Mr. G. Carroll Stribling as Counsel for Appellees.)

The Clerk will enter our appearance as Counsel for the Appellees.

A. M. LEWIS,
HOVEY C. CLARK,
THOMAS W. WHITE,
G. CARROLL STRIBLING,
Attys. for Central Hanover Bank & Trust Co., Trustee under First Mortgage.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 23, 1938.

(Order of Submission.)

March Term, 1939.

Thursday, March 23, 1939.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Hyman G. Stein

for appellant, continued by Mr. Arthur B. Shepley, Jr., for appellee Chase National Bank of the City of New York, as Trustee, and by Mr. Homer Hall for appellee Wabash Railway Company, and concluded by Mr. Hyman G. Stein for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 114] (Opinion.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 11,354.—MAY TERM, A. D. 1939.

Peter J. Carpenter, Appellant, vs. Wabash Railway Company, et al., Appellees.	Appeal from the District Court of the United States for the Eastern District of Missouri.

[May 13, 1939.]

Mr. Hyman G. Stein (Mr. Mark D. Eagleton and Mr. Roberts P. Elam on the brief) for appellant.

Mr. Arthur B. Shepley, Jr. (Mr. Allen C. Orrick on the brief) for appellee, The Chase National Bank of the City of New York, as Trustee.

Mr. Homer Hall (Mr. Nat S. Brown, Solicitor for Appellees Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers, on the brief) for Appellee Wabash Railway Company.

Mr. Hovey C. Clark, Mr. Thomas W. White and Mr. G. Carroll Stribling, submitted brief for Appellee Central Hanover Bank and Trust Company, as Trustee under the First Mortgage of Wabash Railroad Company.

Before SANBORN, THOMAS and VAN VALKENBURGH, Circuit Judges.

VAN VALKENBURGH, Circuit Judge, delivered the opinion of the court.

February 13, 1931, appellant herein, plaintiff below, recovered in the Circuit Court of the City of St. Louis, Missouri, a judgment against the Wabash Railway Company in the sum of $15,000 for injuries sustained in the course of his employment as an employee of said company. On appeal to the Supreme Court of Missouri this judgment was affirmed on condition that a remittitur of $5,000 be entered. This was done and the judgment in the sum of $10,000 stands as of February 13, 1931. December 1, 1931, the T. J. Moss Tie Company, a Missouri Corporation, filed in the District Court of the United States for the Eastern District of Missouri its bill of complaint against the Wabash Railway Company, an Indiana Corporation, alleging that complainant was a general unsecured creditor of the Wabash; that the properties of the Railway Company were heavily mortgaged, that it was insolvent and unable to pay its debts, and praying the appointment of receivers. The railway company filed answer admitting the allegations of the bill and consenting to the appointment of receivers. On December 1, 1931, an order was entered appointing receivers and containing the usual injunctive provisions.

March 1, 1937, the Chase National Bank of the City of New York, Trustee under the Refunding and General Mortgage of the Wabash Railway Company dated January 1, 1925, by leave filed its bill for foreclosure of the lien of said mortgage, for the appointment of receivers, and for the impounding of the income from the mortgaged property. Thereupon the same persons theretofore appointed in the Tie Case were named as receivers in the Chase National Bank case, and the two causes were carried as consolidated cause in Equity, No. 12099.

November 1, 1937, the Central Hanover Bank and Trust Company of New York, as trustee under the first mortgage of the

Wabash Railway Company, dated May 1, 1889, filed its bill, alleging default in the payment of interest on the bonds secured by its mortgage, praying for the appointment of receivers, the impounding of the rents, issues, and profits, and for other relief. The same persons were appointed as receivers and, November 4, 1937, an impounding order was entered, as prayed, in the consolidated causes. May 4, 1938, the said Central Hanover Bank and Trust Company filed its amended and supplemental bill praying for foreclosure of its lien, and it was thereupon ordered that the orders entered in said cause upon November 1, 1937, and November 4, 1937, be deemed to have been entered upon said amended and supplemental bill of complaint.

March 19, 1932, the district court appointed Forrest C. Donnell as Special Master to whom should be referred, "for his investigation, determination and report" all claims, etc. by which the claimant sought to recover any money or property from the receivers out of the estate in their hands. The Master was directed to proceed with all reasonable dispatch to hear and determine the matters presented and to report his findings to the court. The order of appointment contained this further language:

"Before settling his report in any contested case the Special Master shall give to the parties in interest reasonable notice of the time when and the place where he will finally settle such report, and of the fact that they may appear before him and file such exceptions to the same as they may desire".

All persons were required to file their claims before the Special Master on or before July 1, 1932, and to make proof of the amounts, and the lien and priority, if any, thereof. Accordingly, in June, 1932, appellant made a provisional filing of his claim, embodying a judgment for $15,000, then on appeal. This judgment was reduced to $10,000 by the Supreme Court of Missouri June 2, 1934. The hearing before the Special Master was held August 26, 1935. The receivers had filed answer admitting the rendition of the judgment, and denying any preference or priority. Mr. R. P. Elam, counsel for the claimant, then offered a certified copy of the judgment as finally modified, together with a statement of costs. Other counsel present were Theodore Bruere on behalf of claimant, Mr. F. D. Fauser appearing for the Wabash Company and the Receivers, and Mr. E. J. Barker for the Reconstruction Finance Corporation. After the presentation of the cer-

tified copy of the judgment had been received the Special Master asked: "Anything further to be offered in this matter?"

Mr. Elam: "Yes, I would like to have leave to submit at a future date the cost bill of the Circuit Court as soon as it has been prepared".

The Special Master: "Any objection to either of these offers, Mr. Fauser?"

Mr. Fauser: "No, we agree further that the claim be allowed as set out in the judgment".

"The Special Master: It is the sum of $10,000 with interest thereon at the rate of six per cent per annum from the 13th day of February, 1931, to the date of the beginning of the receivership, is that correct?

Mr. Fauser: Yes.

The Special Master: That is to December 1, 1931?

Mr. Fauser: Yes.

Mr. Elam: And costs.

The Special Master: I understand from you the cost bill will be submitted?

Mr. Elam: I will submit it.

The Special Master: Is there anything to be said by you, Mr. Barker, in that regard?

Mr. Barker: No, sir, it is perfectly agreeable to us.

The Special Master: Nothing on behalf of the Reconstruction Finance Corporation?

Mr. Barker: No, our only interest is to see they are properly filed and judgment properly entered.

(Thereupon the reporter marks said certified copy of judgment as 'Exhibit A', and said Exhibit is attached to this record).

The Special Master: On this 6th day of January, 1936, there being present Robert P. Elam, attorney for claimant, th Special

Master determined that, pursuant to bill of costs, being attached and marked 'Exhibit B', hitherto presented to the Special Master by counsel for claimant in the above matter, the court costs hereinbefore referred to are hereby determined to be the sum of $104.15, wherefore, the Special Master determines that he shall report to the court,

(a) That said claim to the extent of $10,000.00, principal, plus $104.15, court costs, plus interest on said principal amount of $10,000.00, at the rate of 6% per annum from February 13, 1931, to December 1, 1931, is correct and valid, and should be allowed in the aggregate of the said principal sum, court costs and interest, as a general unsecured claim, and that judgment should be entered thereon in the above entitled cause in favor of said claimant Peter J. Carpenter, and against defendant, Wabash Railway Company, in said aggregate amount;

(b) That said claim is not entitled to any lien or to any priority over other general unsecured claims'".

January 26, 1938, appellant filed in the district court his application for leave to file his petition for order terminating the receivership of the Wabash Railway Company, and dissolving the temporary restraining order and injunction. The petition presented therewith is very prolix and too long to be incorporated in full herein. The grounds for the relief asked are in substance the following:

That Kuhn, Loeb & Company, an investment banking organization of New York, is, and for many years has been, the banker for the Pennsylvania Railroad Company. That it also had and exercised control of the Wabash Railway Company and its financial policies and investments in 1926. That the Pennsylvania Railroad Company participated and connived with Kuhn, Loeb & Company in a course of conduct whereby the Wabash Railway Company purchased and acquired Lehigh Valley Railroad Company stock. In this manner the Pennsylvania Railroad Company acquired working control of the Wabash Railway Company and the Lehigh Valley Railroad Company, and Kuhn, Loeb & Company collected and received, fees, commissions and profits in excess of $1,000,000, and sold to the Wabash Railway Company, at great profit to itself, stocks owned by Kuhn, Loeb & Company. That this was accomplished by a conspiracy between this investment banking company and officers and directors of the Wabash Railway Company, thus

alleged to be controlled by Kuhn, Loeb & Company, and the Pennsylvania Railroad Company. The loss accruing to the Wabash Company from these transactions is alleged to exceed $20,000,000. The present receivers are alleged to be former executives of the Pennsylvania Railroad, or one of its subsidiaries; and, for that reason, and for the further reason that they are said to have taken no action relative to the losses sustained by the Wabash Railway Company as aforesaid, they are charged to be improper persons to act as such receivers. It is further alleged that, since the receivers were appointed, there have been practically no proceedings of a constructive nature looking to a final disposition of the consolidated causes and the termination of the receivership. It is asserted that the claim of appellant is one entitled to priority over the liens of the mortgages and is entitled to present payment. The relief prayed is:

"(1) That the said Norman B. Pitcairn and Frank C. Nicodemus, Jr., and each and both of them, be discharged as receivers of Wabash Railway Company.

(2) That the receivership of Wabash Railway Company as ordered in the above entitled Consolidated Cause and Constituent Causes be, by the order of this Honorable Court, terminated, and that the property of Wabash Railway Company be discharged from said receivership.

(3) That the Restraining Order made and entered by this Honorable Court on December 1, 1931, as aforesaid, and ordering that all persons be restrained and enjoined from interfering with, attaching, levying upon, or in any manner whatsoever, disturbing any portion of the property and premises of Wabash Railway Company, for which said receivers were appointed, be dissolved.

(4) That the Court, if it shall deem the same proper and best, afford unto Railway Company and its security holders the opportunity for a reasonable time not to exceed thirty (30) days, within which to institute proceedings under Section 77 of the National Bankruptcy Act for the reorganization of Wabash Railway Company, before making an order terminating the receivership and discharging the property of Wabash Railway Company therefrom, effective":

The trial court, in passing upon the application for leave to file appellant's proposed petition, made findings of fact as hereinabove

stated respecting the filings in the consolidated causes, and the proceedings in proof of appellant's claim before the master, and denied the application for the following stated reasons:

"(a) The petition which said petitioner seeks leave to file does not conform to the requirements of Equity Rule No. 37.

(b) The status and classification of petitioner's claim as an unsecured claim which is not entitled to any lien or priority of payment over any other unsecured claim has heretofore been correctly and finally determined in this cause, and said petitioner is now estopped from asserting a claim for preference and priority of payment over the many other unsecured creditors whose claims have been filed and allowed in these proceedings;

(c) The intervening petition which petitioner seeks leave to file states no cause of action in equity, and the granting of leave to file will merely serve to encumber and delay the orderly process of these cases toward a reorganization of the properties of the defendant Railway Company;

(d) The dismissal, as to said petitioner, of the injunctive provisions of the several orders of this Court appointing the receivers in the several constituent causes of this consolidated cause, without a dismissal of the said several causes, would be of no aid or benefit to said petitioner, since all of the properties of the defendant Railway Company would remain in the exclusive custody and control of the Court's receivers".

The decree of the court, being upon the application of appellant for leave to file his proposed petition, our determination must in effect be limited to a consideration of two questions, (a) is the claim of appellant entitled to priority over the liens of the mortgages in suit and to payment as such; and, (b) has appellant the absolute right to file and be heard upon a petition praying, as relief, the preservation and enforcement of his alleged prior lien, the termination of the receivership, and the dissolution of the injunctive orders incidental thereto?

We consider first the status of appellant's claim. No Statute of the State of Missouri, and no decisions of its courts that have been brought to our attention or have been disclosed by our investigation provide or hold that claims for personal injuries by employees are entitled to priority as operating expenses. *Barrie* v. *United Railways Co.*, 138 Mo. App. 557, and *Johnson* v. *United Railways*

Co., 247 Mo. 326, cited by appellant in support of his contention do not so hold, but base their conclusions upon other grounds. The decisions of this court have been consistently against this contention. *Veatch, et al.*, v. *American Loan and Trust Company, et al.*, 79 F. 471; *Pitcairn, et al.*, v. *Fisher*, 78 F. (2d) 649. It is true that in some jurisdictions claims for injuries to employees of railroads while engaged in the discharge of the duties of their employment, are entitled to priority of payment as operating expenses. The Wabash Railway Company is an Indiana corporation. It is the contention of appellant that such is the state of the law in Indiana and Ohio, in which states the Wabash Company owns lines of railroad; that, therefore, the law of priority which the laws of these states accord to personal injury claims against railroads should be made applicable to all the properties of the Wabash wherever situated. Conceding, without deciding, that the laws of Indiana and Ohio are as stated by appellant, that situation can have no effect upon the operation and effect of this Missouri judgment.

"A judgment rendered in one state or country does not operate extra-territorially so as to constitute a lien on lands in another state or country". 34 C. J. 586, Sec. 897; 34 C. J. 508, Sec. 807, and cases cited.

"A judgment of one state when sought to be enforced in another, is not entitled to any right of priority; privilege, or lien which it may enjoy in the state where rendered, but only that which the *lex fori* may give to it in the character of a foreign judgment". 34 C. J. 1130, Sec. 1604, and citations.

By sub-section (n) of Section 77 of the Bankruptcy Act as amended, (11 U. S. C. A. Par. 205 [n]) claims for personal injuries to employees of a railroad corporation are entitled to priority. *Central Hanover Bank & Trust Company, et al.* v. *Williams; et al.*, (C. C. A. 8) 95 F. (2d) 210. But this subsection applies expressly to proceedings in bankruptcy, and at this stage, as charged in the proposed petition, this is an equity receivership. *Illinois Central Railroad Company* v. *United States Fidelity & Guaranty Company*, (C. C. A. 5) 87 F. (2d) 121. But apart from whether judgments of this nature normally have, or may have, priority rights over antecedent mortgage liens, we believe appellant is foreclosed by this record from asserting such rights in this action. The court in its conclusions of law found that the status and classification of petitioner's claim had been correctly and

finally determined as an unsecured claim and that the petitioner was estopped from asserting its preference and priority of payment. We think the record fully justifies this finding and conclusion.

It will be recalled that, in offering this claim for allowance, August 26, 1932, counsel for appellant made no reference to priority. The claim was expressly uncontested. Again, January 6, 1936, counsel for appellant being present, the Special Master announced specifically his determination respecting this claim, and the exact terms in which it should be finally reported to the court. To this announcement no exception was taken nor indicated. The claim throughout was treated as uncontested. That this was the common understanding of the language of the order appointing the Master is evident. The necessary notice of the time and place when and where the Master should finally settle his report and exceptions might be filed is restricted to contested cases. The order says:

"Before settling his report in any contested case".

The practice, in receivership proceedings involving a large number of creditors, to refer claims to a Master for determination is a common one. The court is ordinarily relieved from hearing uncontested cases. This accounts for the meticulous care of the Master in making explicit announcement of the terms of his report at the adjourned hearing in January, 1936. Counsel for claimant again was present and voiced no exceptions. For two full years thereafter no inquiry was made respecting the filing of this report. It is evident that the finding of the Special Master was accepted as final and conclusive, and the trial court rightly held appellant to be estopped from asserting a claim for preference and priority of payment over the many other unsecured creditors whose claims have been filed and allowed in these proceedings.

Now, as to the absolute right of appellant to file and be heard upon his proposed petition. The basis of his intervention is his interest as a claimant against the receivership estate. His claim has already been filed, and its status determined. No reason appears why it may not, and will not, ultimately be disposed of in like manner as other claims of the same nature without the necessity of special intervention. In such case leave to intervene will not be granted to an individual creditor. *Acme White Lead & Color Works* v. *Republic Motor Truck Co.* (D. C.) 285 F. 88; *Elkins* v. *First National Bank*, (C. C. A. 4) 43 F. (2d) 777, 779.

The latter case is peculiarly in point because it deals with "an application on the part of the petitioners to have themselves made parties to the receivership proceeding in order that they might determine a question as to priority in the allowance and payment of claims." In the instant case a Special Master had been appointed to pass upon just such questions, and, as we have seen, had decided the issue without objection. This is not a case where a denial of the right to intervene would be a practical denial of certain relief to which the intervener is fairly entitled and which can be obtained only by intervention, as defined by this court in *Credits Commutation Co., et al.* v. *United States,* 91 F. 570, 573.

One conclusion of law stated by the trial court as a ground for denying leave to file was that the petition sought to be filed did not conform to the requirements of Equity Rule No. 37, then in force. We are inclined to agree with the Chancellor in this conclusion, but we prefer to base our decision of this case upon broader grounds.

The trial court found from the record in this case and from the proceedings in the Consolidated Cause within its judicial knowledge that, pending ultimate disposition, the properties of the defendant Railway Company must remain in the custody and control of the court's receivers; and that the granting of leave to file, upon the basic grounds urged by the applicant, would serve merely to encumber and delay the orderly process toward a reorganization of the properties of the Railway Company. Compare *Blumgart* v. *St. Louis-San Francisco Ry. Co.*, (C. C. A. 8) 94 F. (2d) 712.

The Consolidated Cause in which the receivers have been appointed includes bills for foreclosure and impounding of income, rents, issues and profits under the provisions of prior and primary mortgages. There are no allegations and no claim that such mortgages are invalid, nor that their holders or trustees are parties to the practices charged to be fraudulent and illegal in the petition sought to be filed by appellant. It is apparent, as found by the trial court, that the dismissal of the injunctive orders and of those appointing the receivers would be of no aid to said petitioners without the dismissal of the several causes, and that to protect the prior lien holders in the rights and powers held and exercised by them, the properties of the defendant Railway Company must remain in the exclusive custody and control of the court's receivers. As indicated by conclusions of the trial court a reorganization is in process, and to the propriety of its terms when submitted objections may be entertained.

In cases involving the complexity of this Consolidated Cause large discretion is lodged in the district court. In exercising its discretion the court should consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. (Rules of Civil Procedure, 24b.) In denying the application to intervene we cannot say that discretion has been abused. Appellant has disclosed no legal interest as a claimant that has not already been recognized, and may not be realized in the orderly process without the drastic disorganization contemplated and prayed in the petition sought to be filed. The decree below accordingly is

Affirmed.

[fol. 125] (Decree.)

United States Circuit Court of Appeals, Eighth Circuit.

May Term, 1939.

Saturday, May 13, 1939.

Peter J. Carpenter, Appellant,
No. 11354. vs.
Wabash Railway Company, Norman B. Pitcairn and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, The Chase National Bank of the City of New York, as Trustee, Central Hanover Bank and Trust Company, as Trustee under the First Mortgage of the Wabash Railroad Company, dated May 1, 1889, and T. J. Moss Tie Company.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court, in this cause be, and the same is hereby, affirmed with costs; and that the Wabash Railway Company, Norman B. Pitcairn and Frank C. Nicodemus, Jr., as Receivers of Wabash Railway Company, The Chase National Bank of the City of New York, as Trustee, Central

Hanover Bank and Trust Company, as Trustee under the First Mortgage of the Wabash Railroad Company, dated May 1, 1889, and T. J. Moss Tie Company, have and recover against Peter J. Carpenter the sum of Twenty Dollars for their costs herein and have execution therefor.

May 13, 1939.

United States Circuit Court of Appeals,

EIGHTH CIRCUIT.

MAY TERM, 1939.

PETER J. CARPENTER, Appellant,
vs.
WABASH RAILWAY COMPANY et al., Appellees.
No. 11,354.

Appeal from the District Court of the United States for the Eastern District of Missouri.

APPELLANT'S MOTION FOR REHEARING.

Now comes the appellant, Peter J. Carpenter, and files this, his petition for rehearing, and respectfully moves and petitions this Honorable Court to grant him a rehearing herein, and for grounds of such petition states that this Court, in its opinion, rendered and filed on the 13th day of May, 1939, has inadvertently overlooked material matters of law and fact in the respects and particulars hereinafter mentioned. (The petition which the appellant sought, and the District Court denied him leave, to file is,